

No. 15128

United States
Court of Appeals
for the Ninth Circuit

ROBERT W. BROWN & CO., INC., ROBERT W.
BROWN and OLIVE W. BROWN,

Appellants.

vs.

LEONARD DeBELL (Substituted for United
States License Frame Mfg. Co.),

Appellee.

Transcript of Record

In Two Volumes

Volume I

(Pages 1 to 178)

FILED

SEP 5 1956

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the
Southern District of California
Central Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

**LYON & LYON,
JOHN B. YOUNG,**

**811 West Seventh Street,
Los Angeles 17, California.**

For Appellee:

**ROBERT W. FULWIDER, ESQ.,
FULWIDER, MATTINGLY & HUNTLEY,
5225 Wilshire Boulevard,
Los Angeles 36, California.**

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 16056—PH

UNITED STATES LICENSE FRAME MFG.
CO.,

Plaintiff,

vs.

ROBERT W. BROWN & CO., INC.; ROBERT
W. BROWN, OLIVE W. BROWN, SIDNEY
R. TROXELL, DOE I, DOE II and DOE III,
Defendants.

**COMPLAINT FOR PATENT INFRINGEMENT
AND UNFAIR COMPETITION**

For a First Claim Against Defendants, Plaintiff
Alleges as Follows:

1.

This action arises under the patent laws of the
United States of America and this Court has juris-
diction thereof under 28 U.S.C. 1338(a).

2.

Plaintiff, United States License Frame Mfg. Co.,
is a partnership comprised of Leonard DeBell and
J. C. Bessolo and has its principal place of business
in the County of Los Angeles, State of [2*] Cali-
fornia.

3.

The defendant Robert W. Brown & Co., Inc., is a
corporation organized and existing under and by

virtue of the laws of the State of California, and has a regular and established place of business in Los Angeles County, in the Southern Judicial District of California.

4.

The individual defendants, Robert W. Brown, Olive W. Brown and Sidney R. Troxell, reside and have a regular and established place of business in Los Angeles County in the Southern Judicial District of California.

5.

Doe I, Doe II and Doe III are sued herein under fictitious names and leave of Court will be requested to substitute their true names when the same are ascertained.

6.

On October 7, 1952, United States Design Patent No. D-167,878 for a License Plate Holder was duly and legally issued to Joseph C. Bessolo, who on the 8th day of October, 1952, assigned to the plaintiff herein the entire right, title and interest in and to said patent and the invention covered thereby. Plaintiff has been since said date and still is the owner of the entire right, title and interest in and to said patent with the sole right to sue and collect for all infringements thereof.

7.

Said patent and the invention covered thereby are of great value to plaintiff and the products made and sold by plaintiff embodying said invention have been well and favorably received in the [3] trade and valuable goodwill has been established therein.

8.

The defendants have within six (6) years last past jointly and severally, wilfully and wantonly, infringed and now are infringing, said patent by making, using and selling and causing to be made, used and sold, in the Southern Judicial District of California and elsewhere in the United States, license plate holders embodying the invention disclosed and claimed in said patent and threaten to and will continue to infringe said patent, thereby causing plaintiff great and irreparable damage, unless enjoined therefrom by this Court.

9.

Upon information and belief, the individual defendants Robert W. Brown, Olive W. Brown and Sidney R. Troxell, are directors and officers of the corporate defendant Robert W. Brown & Co., Inc., are the principal stockholders of said corporation, and have personally instigated, directed, controlled and induced and do now direct, control and induce the infringement committed by said corporate defendant and said individual defendants were and are in personal and direct charge and control of all activities of said corporate defendant. Each of the defendants in this action has wilfully and wantonly aided, abetted and conspired with the other defendants named herein, to infringe said patent of plaintiff and to render the same valueless.

10.

The defendants have been notified of their said infringement of said patent.

For a Second and Separate Claim Against Defendants, Plaintiff Alleges: [4]

11.

This action is for unfair competition and this Court has jurisdiction thereof under 28 U.S.C. 1338(b) and under 15 U.S.C. 1121, 1126(h) and 1126(i).

12.

Plaintiff repleads and incorporates herein by reference Paragraphs 2 to 10 of its first claim hereinbefore set forth.

13.

Plaintiff has been and now is engaged in the business of manufacturing and selling in commerce which may be lawfully regulated by Congress, license plate holders embodying the invention disclosed and claimed in United States Design Patent No. D-167,878. Said license plate holders so manufactured by plaintiff have the distinctive appearance and design disclosed in said patent and have been widely sold by plaintiff throughout the United States. Said distinctive appearance and design have acquired a secondary meaning in the trade indicating plaintiff as the source of said goods and that said goods are of recognized good quality.

14.

Defendants have jointly and severally, wilfully and wantonly aided, abetted and conspired with each other to appropriate to themselves the good will that

plaintiff has established in said products and to trade upon the reputation of plaintiff as the manufacturer of high quality products and to unfairly compete with plaintiff, and pursuant thereto, have copied, appropriated and duplicated in all essential respects the appearance and design of plaintiff's said products, all with the intent and for the purpose of confusing and deceiving buyers and prospective buyers and causing them to purchase defendant's goods in the belief that they were and are the goods of plaintiff. [5]

15.

Pursuant to said conspiracy and otherwise, the defendants have jointly and severally, wilfully and wantonly used in commerce that may be lawfully regulated by Congress, by selling and offering for sale without the consent of plaintiff, reproductions, counterfeits, copies and colorable imitations of plaintiff's said products, all of which acts are likely to cause confusion, mistake and deception of purchasers as to the source of origin of said goods, and which acts constitute unfair trade practices and unfair competition with plaintiff.

16.

The acts of unfair competition hereinabove complained of have in fact caused confusion, mistake and deception of purchasers and others in the trade and have enabled defendants to palm off and to enable others to palm off defendants' products as those of plaintiff. By reason of the acts of defend-

ants in unfair competition with plaintiff, defendants have been and are being unjustly enriched and the plaintiff has been and is being irreparably damaged and will continue to be so damaged unless defendants are enjoined by this Court from continuing their said acts of unfair competition. By reason of said acts of unfair competition aforesaid, plaintiff has been damaged in excess of Ten Thousand Dollars (\$10,000.00) and is continuing to be damaged and an accounting is necessary to ascertain the exact amount of such damage.

Wherefore, plaintiff prays for a preliminary and final injunction against further infringement of said Patent No. D-167,878 and against further acts of unfair competition by defendants, their officers, agents, employees, attorneys and those controlled by or associated or in active concert with them; for an accounting of profits and damages for infringement of said patent and by reason of [6] said acts of unfair competition; that the amount of said damages be trebled; for its costs and attorneys' fees incurred in this action; and for such other further relief as this Court shall deem just and proper.

FULWIDER, MATTINGLY &
BABCOCK,

ROBERT W. FULWIDER and
FRANCIS A. UTECHT,

By /s/ ROBERT M. FULWIDER,
Attorneys for Plaintiff.

[Endorsed]: Filed November 19, 1953. [7]

[Title of District Court and Cause.]

ANSWER

Come now defendants Robert W. Brown & Co., Inc.; Robert W. Brown, Olive W. Brown and Sidney R. Troxell, and answering the complaint on file herein allege as follows:

I.

In answer to Paragraph I and II of the first alleged cause of action, defendants deny generally and specifically each and every allegation therein contained.

II.

In answer to Paragraph VI of said first alleged cause of action, these defendants have neither information nor belief pertaining to the matters therein alleged, and placing their denial upon that ground, deny generally and specifically each and every allegation therein contained. [8]

III.

In answer to Paragraph VII of said first alleged cause of action, defendants deny generally and specifically each and every allegation therein contained.

IV.

In answer to Paragraph VIII of said first alleged cause of action, defendants deny generally and specifically each and every allegation therein contained.

V.

In answer to Paragraph IX of said first alleged cause of action, defendants admit that Robert W. Brown, Olive W. Brown and Sidney R. Troxell are directors and officers of the corporate defendant Robert W. Brown & Co., Inc., and except as so admitted deny generally and specifically each and every allegation therein contained.

In Answer to Plaintiff's Second Alleged Cause of Action Defendants Allege:

I.

In answer to Paragraphs XI, XII, XIII, XIV, XV and XVI of said second alleged cause of action, defendants deny generally and specifically, each and every, allegation therein contained and deny that plaintiffs have been damaged in the sum of \$10,000.00, or in any sum whatever, or at all.

As a Separate and Distinct Defense Defendants Allege:

I.

That the license plate holders embodying the invention claimed in United States Design Patent Number D-168,878 have neither a distinctive appearance nor a distinctive design. On the contrary, defendants allege that said license plate holders and the design therefor have been in common usage throughout the United States of America for many years and that the so-called invention of plaintiff does not embody anything novel or distinctive.

License plate holders [9] of the design claimed by plaintiff to be distinctive have been manufactured and sold by many manufacturers other than plaintiff and were designed by others prior to the time that plaintiff secured the so-called design patent.

Wherefore, defendants pray that the complaint on file herein be dismissed and that defendants be awarded his costs, and for general relief.

/s/ SIDNEY R. TROXELL,
Attorney for Defendants.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed December 15, 1953. [10]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

Defendants Robert W. Brown & Co., Inc., a corporation organized under and by virtue of the laws of the State of California, and Robert W. Brown, and Olive W. Brown, and Sidney R. Troxell, individually, hereby substitute Lyon & Lyon and John B. Young as their attorneys of record in place of Sidney R. Troxell.

Dated: September 8th, 1954.

[Seal] ROBERT W. BROWN & CO.,
INC.,

By /s/ ROBERT W. BROWN,

/s/ ROBERT W. BROWN,

/s/ OLIVE W. BROWN. [12]

I consent to the above substitution.

Dated: September 8th, 1954.

/s/ SIDNEY R. TROXELL.

Above substitution accepted.

Dated: September 8th, 1954.

LYON & LYON,

JOHN B. YOUNG,

By /s/ JOHN B. YOUNG.

[Endorsed]: Filed August 18th, 1955. [13]

[Title of District Court and Cause.]

MOTION AND ORDER FOR SUBSTITUTION OF PARTIES

The plaintiff above named and Leonard DeBell represent to the Court that by a written instrument dated July 12, 1954, and recorded in the United States Patent Office on July 19, 1954, in Liber M 241, Page 210, the plaintiff herein, United States License Frame Mfg. Co., a partnership, sold and assigned to Leonard DeBell the entire right, title and interest in and to United States Design Patent No. D-167,878, the patent in suit herein, together with all claims and rights of action for past and future infringement thereof; and,

The plaintiff above named and Leonard DeBell

herewith move the Court to substitute the said Leonard DeBell as party plaintiff in the action in the place and stead of United States License Frame Mfg. Co. [14]

Dated this 7th day of January, 1956.

UNITED STATES LICENSE
FRAME MFG. CO., and

LEONARD DE BELL, By

FULWIDER, MATTINGLY &
HUNTLEY,

By /s/ ROBERT M. FULWIDER,
Attorneys for Both of Said
Parties.

The defendants in the above-entitled action consent to the above substitution.

Dated this 24th day of January, 1956.

LYON & LYON,

By /s/ JOHN B. YOUNG,
Attorneys for All Defendants.

ORDER

Upon the consent of defendants, as set forth above the foregoing motion is granted; and,

It Is Ordered:

That Leonard DeBell shall and he is hereby substituted as plaintiff in the above-entitled action in

the place and stead of United States License Frame Mfg. Co.

1/25/56.

/s/ **PEIRSON M. HALL,**
U. S. District Judge.

[Endorsed]: Filed January 25, 1956.

RWF/hs [15]

In the United States District Court, Southern District of California, Central Division

Civil Action No. 16056-PH

LEONARD DEBELL (Substituted for U. S. License Frame Mfg. Co.),

Plaintiff,

vs.

ROBERT W. BROWN & CO., INC.; **ROBERT W. BROWN** and **OLIVE W. BROWN,**

Defendants.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

This cause having come on regularly for hearing in open Court, evidence, oral, documentary and physical having been introduced and the Court having fully considered the same, together with arguments of counsel, the Court makes the following findings of fact and conclusions of law, to wit:

Findings of Fact

1.

The original Plaintiff herein, United States License Frame Mfg. Co., is a partnership comprised of Leonard DeBell and J. C. Bessolo and has its principal place of business in the County of Los Angeles, State of California. [16]

2.

The defendant, Robert W. Brown & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and has a regular and established place of business in Los Angeles County in the Southern Judicial District of California.

3.

The individual defendants, Robert W. Brown and Olive W. Brown are husband and wife and reside and have a regular and established place of business in Los Angeles County in the Southern Judicial District of California.

4.

On October 7, 1952, United States Design Patent No. D-167,878 for a License Plate Holder was duly and legally issued to Joseph C. Bessolo, who on October 8, 1952, assigned the entire right, title and interest in and to said patent to the original plaintiff, U. S. License Frame Mfg. Co. On July 12, 1954, United States License Frame Mfg. Co. assigned to the present Plaintiff, Leonard DeBell, the

entire right, title and interest in and to said Letters Patent, together with all claims and rights of action for profits and damages by reason of past infringements thereof, with the sole right to sue for and collect the same for his own use and benefit. Leonard DeBell is the present owner of said Letters Patent with the sole right to sue and collect for all infringements thereof.

5.

The patent in suit, D-167,878, and the invention covered thereby are of great value to Plaintiff, products made and sold by Plaintiff embodying said invention having been well and favorably received in the trade. Shortly after the invention of the design of the patent in suit, the Plaintiff, U. S. License Frame Mfg. Co. obtained an [17] order (Exhibit 6) from Ridings Motors in Long Beach, California, on March 6, 1948, for 300 pairs of license frames embodying said invention. Said license frames embodying the design of the patent in suit were made and delivered by Plaintiff prior to and were invoiced (Exhibit 7) on April 10, 1948. These dates are confirmed by concession of priority in the file wrapper of the patent in suit (Exhibit G).

6.

Following the first sale by the Plaintiff U. S. License Frame Mfg. Co. of license frames embodying the design invention of the patent in suit, said Plaintiff continued to manufacture and sell said license frames, and in spite of the fact that their selling price was higher than other designs sold by

Plaintiff, said sales continued to increase over the years with respect to and until they surpassed other designs of license frames manufactured and sold by plaintiff. Said license frames embodying the design of the patent in suit were substantially copied by numerous competitors in the field. This commercial acceptance by the trade of license frames embodying the design of the patent in suit and particularly the widespread copying thereof by competitors strengthens the presumption of validity attaching to the issuance of the patent.

7.

The design of the patent in suit embodies what has since come to be known in the trade as a double-header license frame comprising a basic frame structure of generally rectangular shape having upper and lower indicia carrying inserts therein. In the frame of Plaintiff's design, one of said inserts is slightly enlarged over the normal width of the basic frame structure and extends inwardly of the frame and centrally thereof. The other insert is enlarged both inwardly and outwardly and is likewise centrally [18] spaced with respect to the sides of the frame. In each instance, the surface texture of the insert contrasts with that of the remaining portion of the frame and the entire frame is balanced and streamlined, the over-all appearance resulting in a new and ornamental design when viewed by the ordinary observer. Plaintiff's design is exemplified by Exhibits 3, 3A, 4 and 4A, it being customary in the trade to have the larger of the inserts on either the top or bottom as the customer may require.

8.

On or about September 2, 1952, the Defendant Robert W. Brown, shortly prior to the issuance of the patent in suit, became a sales representative of Plaintiff U. S. License Frame Mfg. Co., selling Plaintiff's license frames to the trade, the orders for said frames being filled by Plaintiff and billed directly by Plaintiff to the customer, payment for said frames being made to Plaintiff. One of the orders taken by Brown and submitted to Plaintiff during their association was from Eddie Nelson, an auto dealer in Huntington Park, California. Exhibits 3 and 3A illustrate the frames supplied by Plaintiff to Eddie Nelson pursuant to said order, which called for partial shipments over a period of months.

9.

On or about November 17, 1952, disagreements having arisen between the Plaintiff U. S. License Frame Mfg. Co. and the Defendant Robert W. Brown, the latter's association with Plaintiff was terminated. Shortly thereafter, in or about January, 1953, the Defendant Brown set up his own manufacturing facilities for license frames, which business was incorporated in July, 1953, as the Defendant Robert W. Brown & Co., Inc. Shortly after establishing his manufacturing business, the Defendant Robert W. Brown and thereafter the Defendant Robert W. Brown & Co., Inc., supplied license frames to Eddie Nelson [19] in Huntington Park, exemplified by Plaintiff's Exhibits 2 and 2A, the undelivered balance of the Eddie Nelson order

placed with U. S. License Frame Mfg. Co. having been cancelled by Brown after he set up his own business.

10.

The license frames exemplified by Exhibit 2 sold by Robert W. Brown and Robert W. Brown & Co., Inc., to Eddie Nelson and others are substantially identical with the patent in suit, Exhibit 1, and frames made by Plaintiff thereunder as exemplified by Exhibits 3 and 3A. Said frames sold by Defendants incorporate the new and ornamental design of the patent in suit, are in all respects substantial duplicates thereof, embody the invention of said Letters Patent, and are an infringement thereof.

11.

The defendants had actual notice of their infringement of the patent in suit, but continued to jointly and severally, infringe said patent by making and selling and causing to be made and used and sold, license plate frames embodying the invention covered by said patent.

12.

The Defendants Robert W. Brown and Olive W. Brown are respectively President and Treasurer of the corporate Defendant Robert W. Brown & Co., Inc. Robert W. Brown of record the sole stockholder of said corporation and has personally instigated, directed, controlled and induced and does now direct, control and induce the infringements committed by said corporate Defendant, and said

individual Defendant, Robert W. Brown, at all times was and is in personal and direct charge and control of all activities of said corporate [20] Defendant.

As documentary evidence of the prior art, Defendants introduced into evidence Exhibits G1, G2, G3, H, I, J, M and N, of which Exhibits G1, G2 and G3 are the file wrapper reference patents to Watts, Griffith and Overton cited and considered by the Patent Office Examiner in his examination of the patent in suit. Said file wrapper reference patents do not anticipate or negative invention of the patent in suit and the Examiner did not err in allowing and issuing said patent.

14.

As to the other documentary exhibits submitted by Defendants as prior art, the catalogue Exhibit J and the Orester and McRuer patents, Exhibits M and N, are not as relevant as the patents relied on by the Examiner and in no way disturb the validity of the patent in suit. The Gazan patent, Exhibit H, is later in point of time and therefore not prior art against the patent in suit. The Gazan file wrapper, Exhibit I, is relevant only to show that the Patent Office fully considered all issues raised in connection with the Gazan and Bessolo patents and decided same in favor of the Bessolo patent in suit.

15.

The defendants took the deposition of Stanley M. Olson in Minneapolis, Minnesota, on January

19, 1956, which was read and offered in evidence as Defendants' Exhibit A, the exhibits attached thereto being numbered A1 to A15, inclusive. While the proofs offered in said deposition leave much to be desired as to evidential value, the date on Exhibit A2 being 1949 and the date on Exhibit A3 having obviously been changed from 1949 to 1947, no date having been offered or proven for the catalogue sheet Exhibit A1 or the license frames Exhibits A5, A10, and A15, the evidence was nevertheless admitted. The [21] witness Olson admittedly was an interested witness since his company, the Douglas Company, had previously been charged with infringement by plaintiff. The evidence also shows that the Douglas Company at one time was a distributor of plaintiff's license frames.

16.

Taking the Olson deposition at its face value and conceding that license frames similar to those illustrated by the undated Exhibits A1, A5, A10 and A15 were in fact sold by the Douglas Company early enough to be prior art against the patent in suit, nevertheless they do not anticipate the ornamental design of the patent in suit, which demonstrates invention over said exhibits. The license frames illustrated in Exhibit A1 and before the Court as Exhibits A5, A10 and A15 are simple stampings with silk screen lettering thereon, the over-all appearance of which is materially different from that of the license frames sold by plaintiff under the patent in suit.

17.

The so-called Cobb frame illustrated in Exhibit A1 as No. 101AA, allegedly sold in December, 1947, is in all material respects a substantial duplicate of the frames shown in the Watts patent, Exhibit G1, cited and considered by the Examiner during the prosecution of the Bessolo patent in suit. While the picture of the Cobb frame 101AA shows lettering on both top and bottom of the frame, the Watts patent shows in Figure 1 a frame with lettering on the bottom and in Figure 2 a frame with lettering on the top, it being obvious that Watts contemplated lettering on either or both top and bottom in a single frame. The Bessolo patent in suit clearly demonstrates novelty and invention over the Cobb frame 101AA which is no more relevant to the question of validity of the patent in suit than the Watts patent Exhibit G1. Exhibit A5 frame, which the witness Olson testified was substantially the same as the [22] Cobb frame obviously differs therefrom and is not in fact a 101 frame but some other and later frame not even shown on the catalogue sheet Exhibit 1. There is no evidence whatsoever that frames made according to Exhibit A5 were made or sold prior to March 6, 1948, the effective date of the patent in suit.

18.

The Douglas frames No. 102 illustrated by Defendants' Exhibits A1, A10 and A15 which Olson testified were first sold in January, 1948, are in all material respects the same as the frames illustrated in the file wrapper reference patents G3 and

G2. The frame of the Overton patent Exhibit G3 with its downwardly-extending center section, is substantially the same as Defendants' Exhibit A10 and is a reversal of Exhibit A15, which is itself merely a reversal of Exhibit A10. Similarly, the Griffith patent Exhibit G2 is substantially the same as Exhibit A15 and a reversal of Exhibit A10. Defendants' Exhibits A1, A10 and A15 are no more relevant, and in some respects less relevant, to the patent in suit than are the file wrapper reference patents to Griffith and Overton, Exhibits G2 and G3. None of said exhibits shows the ornamental design of the Bessolo patent and none of said exhibits, taken singly or in combination, supports defendants' contentions of lack of novelty and invention.

19.

The testimony concerning the manufacture and sale of license frames, Exhibits C, D and K, prior to the invention of the patent in suit, is not convincing. At best, it merely shows the existence of two-cavity master dies which might have been used to produce said frames but which were equally suitable for and were commonly used to make other and different kinds of frames of varying sizes to meet the requirements of various state laws. Master dies are made for the express purpose of permitting the manufacture by the use of but one die of many different kinds of frames. The evidence as to the [23] use of such dies before the patent in suit to make frames of any particular design and specifically frames similar to Exhibits C, D and K

is neither convincing nor persuasive. The evidence as to said exhibits does not disturb the validity of the patent in suit which clearly discloses and claims a new and ornamental design.

Conclusions of Law

1.

This action arises under the patent laws of the United States and this Court has jurisdiction thereof under 28 U.S.C. 1338(a).

2.

Design Patent No. D-167,878 was duly and legally issued on October 7, 1952, and is good and valid in law.

3.

The plaintiff, Leonard DeBell, is the owner of the entire right, title and interest in and to said Letters Patent and all rights of action for past infringements thereof.

4.

The defendants have infringed Design Patent No. D-167,878 by manufacturing and selling license frames exemplified by Exhibits 2 and 2A.

The plaintiff, Leonard DeBell, is entitled to judgment for a permanent injunction and an accounting with costs.

/s/ PEIRSON M. HALL,

United States District Judge.

RWF/bdj

[Endorsed]: Filed March 2, 1956. [24]

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 16056-PH

LEONARD DeBELL (Substituted for U. S. Li-
cense Frame Mfg. Co.),

Plaintiff,

vs.

ROBERT W. BROWN & CO., INC.; ROBERT W.
BROWN and OLIVE W. BROWN,

Defendants.

JUDGMENT

This cause having come on to be heard and the
Court having made and entered its Findings of
Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed:

1.

That U. S. Design Patent No. D-167,878 was duly
and legally issued on October 7, 1952, and is good
and valid in law.

2.

That plaintiff, Leonard DeBell, is the owner of
said Letters Patent, together with all rights of ac-
tion for infringement thereof.

3.

That the defendants Robert W. Brown and Co.,
Inc.; Robert W. [27] Brown and Olive W. Brown
have infringed said Letters Patent No. D-167,878

by the manufacture and sale of license frames exemplified by Exhibits 2 and 2A in evidence.

4.

That plaintiff have judgment on his Complaint for infringement of said Letters Patent No. D-167,878.

5.

That a writ of permanent injunction issue out of and under the seal of this Court in usual form, enjoining said defendants and each of them and their officers, associates, agents, employees and those in active concert or participation with them from infringing said Patent No. D-167,878.

6.

That the plaintiff, Leonard DeBell recover from said defendants' general damages which shall be due compensation for said infringement by defendants, and that this cause be referred to Theodore Hocke, Esq., as special master to ascertain such damages and report the same to this Court.

7.

The plaintiff recover from said defendants, and have execution for, his taxable costs in the amount of \$.....

Dated this 1st day of March, 1956.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed March 2, 1956.

Docketed and entered March 2, 1956. [28]

United States District Court, Southern District
of California, Central Division

LYON & LYON, ESQS.,
811 West 7th St.,
Los Angeles 17, Calif.

FULWIDER, MATTINGLY &
HUNTLEY, ESQS.,
5225 Wilshire Blvd.,
Los Angeles 36, Calif.

Re: DeBell v. Robert W. Brown & Co.,
et al., No. 16056-PH.

You are hereby notified that judgment has been docketed and entered this day in the above-entitled case.

Dated: Los Angeles, California, March 2, 1956.

CLERK, U. S. DISTRICT
COURT,

By C. A. SIMMONS,
Deputy Clerk. [29A]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Robert W. Brown & Co., Inc.; Robert W. Brown and Olive W. Brown, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Cir-

cuit from the judgment entered in this action on the 2nd day of March, 1956.

Dated: This 2nd day of April, 1956, at Los Angeles, California.

LYON & LYON,

JOHN B. YOUNG,

By /s/ JOHN B. YOUNG,

Attorneys for Defendants.

Affidavit of service by mail attached.

[Endorsed]: Filed April 2, 1956. [30]

In the United States District Court, Southern District of California, Central Division

No. 16056-PH

LEONARD DeBELL (Substituted for U. S. License Frame Mfg. Co.),

Plaintiff,

vs.

ROBERT W. BROWN & CO., INC.; ROBERT W. BROWN and OLIVE W. BROWN,

Defendants.

Honorable Peirson M. Hall, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

January 31, 1956

Appearances:

For the Plaintiff:

FULWIDER, MATTINGLY &
HUNTLEY, By
ROBERT W. FULWIDER, ESQ.; and
WILLIAM K. YOUNG, ESQ.

For the Defendants:

LYON & LYON,
JOHN B. YOUNG, ESQ.

* * *

Mr. Fulwider: I desire to offer the patent in suit as Plaintiff's E, the Bessolo patent.

(The patent in suit referred to was marked Plaintiff's Exhibit No. 1 in evidence.) [6*]

* * *

I would like to introduce in evidence at this time that particular frame that I am speaking of, which was Exhibit 2 in the Brown deposition. We will offer it here as Plaintiff's Exhibit 2.

The Court: That is the Eddie Nelson frame?

Mr. Fulwider: That is the Eddie Nelson frame. It is white raised letters on a red background, and on the rear of it the notation, "Robert W. B-r-a-u-n & Co.," which was a misspelling of his name.

I don't know whether you want to keep the tag or not, Mr. Clerk. Perhaps it won't do any harm.

The Court: That is admitted.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Fulwider: I want to offer a photograph of Exhibit 2 [11] which perhaps we can mark as Exhibit 2-A. We have photographs of these various frames and I thought it might facilitate matters if we also had them marked.

The Court: Admitted.

(The photographs referred to were received in evidence and marked Plaintiff's Exhibit No. 2-A.)

Mr. Fulwider: As Exhibit 3 I would like to offer in evidence so the Court at this time can see the visual evidence of what I am discussing, one of the Eddie Nelson frames supplied by U. S. License Frame Company as a part of that order that I just mentioned.

This carries a little tag called Exhibit B. This will be Exhibit 3.

The Court: That is the plaintiff's Eddie Nelson frame?

Mr. Fulwider: That is right, your Honor.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Fulwider: Exhibit 3 was a frame supplied by plaintiff when the Nelson order was cancelled. Exhibit 2 is the frame thereafter supplied by the defendant.

We have a photograph of Exhibit 3 which I

would like to have marked as 3-A, and offer it in evidence.

The Court: Admitted.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 3-A.) [12]

* * *

Mr. Fulwider: * * * I would like to offer in evidence two representative frames similar to the Eddie Nelson but varying somewhat, one showing the large header at the top. The Eddie Nelson frame shows the large header at the top. The Eddie Nelson frame shows the large insert at the top, which is the patent in suit just upside down, and it is conceded by all parties that it is customary in the trade, as the customer desires, either to supply them with the large insert on the bottom or the large insert on the top. The holes are uniform so they can work either way.

I would like to offer as Exhibit 4 this frame, which has a large insert, Phil Hall, Hollywood, in the small one, as another frame put out by the Robert Brown Company. It has his name pressed on the back. It has the two inserts arranged exactly as in the patent in suit.

The Court: That is another Brown frame?

Mr. Fulwider: Yes.

The Court: Admitted. [13]

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 4.)

Mr. Fulwider: We have a picture of that which

I would like to offer as Exhibit 4-A showing the Brown Exhibit 4.

The Court: Admitted.

(The exhibit referred to was received in evidence and marked Plaintiff's Exhibit No. 4-A.) [14]

* * *

PAUL D. HUCKELBURY

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name in full, please. [25]

* * *

Direct Examination

By Mr. Young:

Q. Mr. Huckelbury, will you tell us the name of your employer? A. B. J. Audet.

Q. The name of your company?

A. The Benmatt Organization.

Q. What business is the company in?

A. Manufacturing license plate frames and die cast name plates.

Q. How long have you been with the company?

A. I have been in the manufacturing frames business over 20 years.

Q. How long have you been with the Benmatt organization?

A. Since he bought the company—I don't remember the year—about eight or nine years ago.

Q. Did that happen during the war?

(Testimony of Paul D. Huckelbury.)

Q. No, I think it was after the war.

Q. Were you with the predecessor of the company? A. Oh, yes.

Q. You have been continuously, then, in the same business for 21 years? A. Yes.

Q. What are your duties now with the company? [26] A. Plant superintendent.

Q. What do you do as plant superintendent?

A. Well, I regulate the production of the plant and I operate the plant.

Q. Are you familiar with the license plate frame that the company makes? A. Yes.

Q. Have you been familiar with the license plate frames during this entire 21 years? A. Yes.

Mr. Young: I hand you a plate which we will mark—

The Court: C for identification.

(The exhibit referred to was marked Defendants' Exhibit C for identification.)

Q. —which will be marked C for identification, and ask you to observe it.

A. (Examining exhibit.)

Q. Can you identify that license plate frame?

A. Yes.

Q. Who made it? A. We did.

Q. The Benmatt Organization?

A. At that time the Shehan Manufacturing Company manufactured this plate. [27]

Q. Do you know when that frame was manufactured?

(Testimony of Paul D. Huckelbury.)

A. This particular frame, I don't know when this particular frame was made, no.

* * *

The Court: You made this frame?

The Witness: Yes, but I don't know the date that that particular frame was made. We made frames just exactly like that in 1938, but I don't know whether it is that dealer, but we made several for several different dealers and I can't remember their names.

The Court: What are these, key numbers on the back, [28] 650 stamped in here?

The Witness: That is our style number.

The Court: Go ahead, counsel.

Q. (By Mr. Young): Mr. Huckelbury, would you call this a 2-line frame or a double header frame? A. They are called both.

Q. Is there any distinction in the manufacturing techniques that is important here?

A. Not necessarily.

Q. At the present time with the Benmatt Organization, are these 2-line frames more popular than 1-line frames?

A. Well, I wouldn't know exactly. Some months we run 70 per cent or 80 per cent of our production in 2-line frames, other months we run 20 per cent of our production, so it would be hard for me to say what percentages we do run them in. [29]

* * *

(Testimony of Paul D. Huckelbury.)

Q. (By Mr. Young): I hand you a license plate indentified as Exhibit D and ask if you can identify that? A. Yes. [31]

Q. Do you know who made that license plate frame? A. Yes.

Q. Who did?

A. We did, the company I work for.

Q. Was the company Shehan Manufacturing Company at that time or the Bennatt Organization? A. Shehan.

Q. Do you recall anything about the construction of the dies for that plate?

A. I don't know exactly what you are referring to.

Q. Do you know who made the dies for that plate?

A. I believe the Ace Stamp and Stencil made it, I am not sure of that.

The Court: It says here, "Dura Products Manufacturing Company, Canton, Ohio."

The Witness: They were a distributor of ours and we stamped their name on every part we manufactured for them. It is right in the die. We still have the die.

Q. (By Mr. Young): Do you know if that part was made and sold before the war?

A. Yes, it was.

Mr. Fulwider: May I ask for clarification? Counsel says "that part." He doesn't mean this particular frame, Exhibit D, does he? [32]

Mr. Young: I do not mean that particular

(Testimony of Paul D. Huckelbury.)

frame, but frames identical to that made from the same die.

The Witness: Yes. We still have the dies.

The Court: You say, "before the war." Which war?

Mr. Young: Your Honor, I was referring to the Second World War.

Q. Would your answer be the same, Mr. Huckelbury?

A. Yes, it was made in 1941, I believe, right about Pearl Harbor. I don't remember the exact date.

Q. Mr. Huckelbury, do you know why 2-line frames were made instead of single line frames?

A. Why they were made?

Q. Yes.

A. Some people just preferred them. It gives them more advertising copy.

Mr. Young: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Fulwider:

Q. As I understand it, your testimony is that you did not have any records to support your testimony as to when the dies for Exhibits C and D were made, is that correct?

A. I don't have access to the records of the Shehan Manufacturing Company.

Q. Do you have any memorandum or written

(Testimony of Paul D. Huckelbury.)
documents [33] at all that you have used to refresh your recollection in your testimony today?

A. No, I do not.

Q. Your testimony that these frames were made prior to World War II is strictly unsupported testimony as of this time? A. That is right. [34]

* * *

Recross-Examination

By Mr. Fulwider:

Q. Mr. Huckelbury, have these frames, Exhibits C and D, been manufactured by the Audet Company, the Benmatt Organization?

A. That is these two frames up here?

Q. Yes. [36]

A. I can't remember whether they were or not. I am pretty sure they have, but I can't remember.

Q. Do you have any records at all to indicate whether or not these dies that you say from which Exhibits C and D were made, were made for the Benmatt Organization or for the Shehan Company?

* * *

The Witness: I don't have any records. We do have the dies, though.

Q. (By Mr. Fulwider): You do have the dies?

A. We do have the dies.

Q. Is there anything on those dies to indicate when they were made?

A. That I don't know. I never did look at them that close, I haven't in so many years.

(Testimony of Paul D. Huckelbury.)

Q. But you don't know yourself whether or not the [37] dies from which the frames C and D were made, were made before or after Benmatt took over or Audet took over the Shehan Company, do you?

A. I don't have any records but I do know they were manufactured because I worked for the company and produced the parts myself.

Q. It is solely your unsupported recollection, as of this time, is it not?

A. As of this time, yes.

Mr. Fulwider: That is all.

* * *

PAUL EDWARD LENK

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Young:

Q. Mr. Lenk, would you state the name of your employer, the company you work for? [38]

A. I am the president and principal stockholder of the Ace Stamp and Stencil Company.

* * *

Q. (By Mr. Young): I show you Exhibit D and ask if you have ever seen that frame? [39]

A. Yes, I have.

Q. Have you seen that identical frame?

A. Yes. In fact, I was the one who gave you this frame.

(Testimony of Paul Edward Lenk.)

Q. Where did you get that frame?

A. I searched through some old shots from dies, old samples, old parts, and I was able to find this some six months ago. The particular part I can attribute to a definite time that it was made.

Q. What time was it made?

A. This particular frame was shot in January of 1942. I can't specify the exact date, but during the month of January, 1942. The very first shot off the die produced this frame.

Q. For what order was that frame, do you know?

A. This order was for the Shehan Manufacturing Company.

Q. The Shehan Manufacturing Company employed your concern to make that frame?

A. To manufacture the dies. The dies is the product that produces this frame.

The Court: Do you make the die, then you make what you call a shot off of it, and keep the shot and send them the die?

The Witness: In this particular case, no, we make the [40] dies. We do not have die casting facilities. The customer when billed—usually the die here accompanies the die to the purchaser and we guarantee, or we will say, the manufacturer of dies guarantees that the die will produce acceptable merchandise. So in order to substantiate presenting a bill for the merchandise we must normally accompany the die and as long as the first article

(Testimony of Paul Edward Lenk.)

—what we call the first article—is acceptable then we present our invoice for payment. We take the first article from the die as physical evidence in case there is any question as to dimensional sizes, the weight of the object, and so forth. There are certain things that you must guarantee in a die to produce and this is your physical evidence.

The Court: So you keep that?

The Witness: So we keep that, yes.

Q. (By Mr. Young): I hand you Exhibit C and ask you to look at it carefully. Do you know who made dies for that frame?

A. We made the original die that this part came from, and also modifications to the original die.

Q. Do you know when that particular frame that you hold in your hand was made?

A. This frame, I cannot establish the month but I can establish the year.

Q. What was that year? [41]

A. I will say this is probably 1940.

Q. Was it before or after the Second World War? A. Yes, it was.

Q. Do you know who you sold those parts to?

A. The insert, you mean?

Q. Yes, the dies and insert.

A. The dies and the inserts were sold to the Shehan Manufacturing Company.

Q. The same company as Exhibit C?

A. Correct.

Q. Do you know when the first shot was made from the original die that you made?

(Testimony of Paul Edward Lenk.)

A. It would be prior to that time, perhaps 1933.

Q. Did the original die differ, or would it produce a part any different, from what you hold in your hand? A. Yes, it would.

Q. Would you explain that difference?

A. When this die was first made it was to produce a single line or a single insert license frame. We made what was then known as a competition frame, one very light, where the amount of material was the least possible. Unfortunately Shehan Manufacturing Company, when they received this frame it was not readily acceptable.

The Court: That is the single line?

The Witness: The single line. And at this time it had [42] just a plain top. As an item, it wasn't sold except in very, very small quantities. So this die was built primarily for what they call the booster frame or competition frame.

Q. And that was made— A. In 1938.

Q. I mean the 2-line.

A. In 1940. The die was then completely recut, inserts were made—which we call these insert, locator lines—in which the entire die was recut and we ran reinforcement in the back and we made provision for both top and bottom.

The reason for that, in some of the models of cars it was necessary—I believe it was introduced before—to use this frame in several manners, either this way or the other way (illustrating).

We had in certain models of cars a certain defi-

(Testimony of Paul Edward Lenk.)

nite over-all height to maintain and that was 7 1/16 inches. I remember that very distinctly.

Q. Mr. Lenk, is there any limitation as to how close the two parallel sides of the frame may come together? What is the minimum clearance for a California frame?

A. If I remember correctly, the California Vehicle Code states that no portion of the lettering can be covered by the frame. That would render the lettering illegible, I believe. [43]

Q. You have spoken of the Shehan Manufacturing Company. Do you know a man named Godfrey Bell?

A. I am very well acquainted with Mr. Bell, yes.

Q. Did you do business with Mr. Bell at the same time you are speaking of here in connection with the alteration of that die?

A. We did business with Mr. Bell only in that Mr. Bell acted in an executive capacity. I dealt primarily through his sales manager and his general superintendent.

Q. As of 1950, let me say, were you making 2-line die frames?

A. Well, as of 1950 we were still making license frame inserts, but we were no longer building dies, that is, the over-all dies.

The Court: What do you mean license frame inserts?

The Witness: Your Honor, these are the lettered or engraved pieces of steel that produce the lettering or the insignia, as the case may be.

(Testimony of Paul Edward Lenk.)

The Court: They are made separately?

The Witness: They are interchangeable. They are separate and they are interchangeable.

In other words, instead of "La Jolla" we could have "Los Angeles," "San Diego," "Bakersfield," or any other city in the State of California that they have orders to fill. In other words, this could be the Jones Company at Los Angeles [44] as well as at La Jolla.

The Court: You use the same die?

The Witness: The same basic die, which is not changed except in the years in which the over-all frame die was changed, which was done right after the war.

Your Honor, the major over-all dies are very expensive, and that is the principal reason for making interchangeable inserts, to reduce the initial cost, or the cost to the customer who buys the advertising value of the frame.

The Court: What are your dies made of?

The Witness: Of tool steel. The inserts are of milled steel, usually 10-20, 10-30 steel.

Mr. Young: Would you mark this, please?

(The exhibit referred to was marked Defendants' Exhibit E for identification.)

Q. (By Mr. Young): I hand you Exhibit E. for identification and ask you if that is a sample of an insert die?

A. This is a sample of an insert commonly used.

(Testimony of Paul Edward Lenk.)

Q. Did you make that particular insert?

A. No, I did not.

Mr. Young: I offer this in evidence.

(The exhibit heretofore marked Defendants' Exhibit E for identification was received in evidence.)

Mr. Young: Your Honor, I would again like to offer [45] Exhibits C and D in evidence as the dies, or rather the frames that Mr. Lenk has identified as making the dies for.

Mr. Fulwider: We still object as not sufficiently proven except by oral testimony.

The Court: Overruled. They are admitted in evidence. Exhibits C and D are admitted.

The Clerk: Are they still restricted?

The Court: No, they are admitted in evidence for all purposes.

(The exhibits heretofore marked Defendants' Exhibits C and D for identification were received in evidence.)

* * *

Q. Do you know whether Exhibit C or D was made for [46] that company?

A. Is this Exhibit C and D?

Q. I am speaking of this one (indicating).

A. No. Neither one of these dies were made for the A-1 Venetian Blind Company or Dura Products Company.

(Testimony of Paul Edward Lenk.)

The Court: He has testified that they were both made for Shehan Manufacturing Company.

The Witness: That is correct.

Mr. Young: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. Fulwider:

Q. Mr. Lenk, is there anything on Exhibit C that indicates when it was made?

A. The only thing that might tie in with records, there is nothing that indicates to me other than this small A-1, which indicates the model or the die which this was produced from.

Q. A-1 is the number given to the die?

A. That is the designation as the A-1 die.

Q. Do you have that die?

A. I do not. You will remember we delivered these to the customer. The customer has it.

Q. Do you have any records as to when the A-1 die was made? [47]

A. I am sorry, we don't. We went into the defense business since 1950 and they have all since been destroyed. It was only through sheer luck that I found that Exhibit D, the frame itself.

Q. Now, this Exhibit C, this particular exhibit, when do you say it was made, this frame that you are holding in your hand?

A. This one I established in 1940, I am quite sure.

(Testimony of Paul Edward Lenk.)

Q. This particular frame?

A. No, we will say——

Q. This one I have in my hand, this was made in 1940?

A. No. I will retract that statement, because there is nothing on this that would identify an article of similar nature that could be produced at a later date. I will say articles similar to that. In other words, we will say a die can run for many, many years. The article produced, we will say today, should be in theory the same as produced when the die was first made, less certain wear and tear.

Q. You have no knowledge as to whether this particular exhibit that I hold in my hand, Exhibit C, as to when it was made, do you?

A. No. But I will make the statement that a frame similar to that, or with essentially the same reading matter, was produced in 1940.

Q. When did you first see this particular frame, [48] Exhibit C?

A. About two hours ago.

The Court: Your testimony is that the die from which Exhibit C was made was made by you?

The Witness: That is correct.

The Court: In 1940?

The Witness: After a die is delivered and the first article is made I have no further recollection or I have no particular interest in the die. It is then accepted by the customer and it becomes his property and it is his business what he does with the die.

Q. (By Mr. Fulwider): Have you made a

(Testimony of Paul Edward Lenk.)

search to find the records to support your testimony that the die A-1 was made when you say it was made?

A. I went through the records. We have no records in our plant now that would be prior to 1950 of any job orders or invoices.

Q. So that it is your testimony that the A-1 die was made prior to 1950 is entirely your own present unsupported recollection?

A. That is correct.

Q. And you have not referred to any memoranda or any notes or any records to refresh your recollection?

A. The only item that stands very vividly in my [49] memory is that—Exhibit D, I believe it is, the shell frame—

Q. We will go into that in a minute. Let us finish up on Exhibit C here first.

We will renew our objection that we made before that Exhibit C is merely illustrative of what this witness says that he made a die some 20 years ago.

The Witness: Numerous dies.

Mr. Fulwider: I mean this die A-1.

The Court: No, his testimony is flatly that he made the die for that frame in 1940.

Mr. Fulwider: Yes, that is the way I understand it.

The Witness: Or a frame exactly like it. Maybe not that particular one.

The Court: You do not know whether they used

(Testimony of Paul Edward Lenk.)

different inserts, then, or not. Did you make inserts for the dies?

The Witness: Yes, the insert submitted a moment ago was not our particular product.

The Court: But it is the same general idea?

The Witness: Generally speaking, yes, your Honor.

The Court: So what you made was a blank die, or a die that would produce a blank product on which an insert could be made?

The Witness: With that configuration; yes, sir.

The Court: In 1940? [50]

The Witness: In 1940 or prior to 1940. The inserts may not have been used immediately upon receipt.

The Court: Objection overruled.

Q. (By Mr. Fulwider): You don't know, do you, Mr. Lenk, as to whether this particular frame I hold in my hand, Exhibit C, was made from the particular die A-1 that you made or you say you made and sold to Shehan, do you?

A. Granted, although it isn't feasible for a company to spend money twice for an item, particularly the expense which these dies run.

The Court: Is the A-1 your marking?

The Witness: Yes, that is ours.

The Court: Then there are those numbers at the top and bottom.

The Witness: These are not ours. Those are primarily the manufacturer's own identification as to the style.

(Testimony of Paul Edward Lenk.)

This also, your Honor, is inserted in the back, and we call it the female or the cavity side of the male or cold side of the die is changed also.

In order to identify for their own purposes, probably for sales records, this is changed at the same time. These are removable. These are what we call interchangeable inserts.

In other words, this style, your Honor, could have an [51] emblem or two emblems. In other words, we have built some 20,000 inserts in various adaptations for the frames throughout the United States. We are one of the largest producers of dies at one time to my knowledge in the whole United States of this particular product.

Q. (By Mr. Fulwider): You cannot say from your own knowledge that this little raised indicia here, A-1, was put there or comes there solely because it was on a die that you made that you call A-1?

A. No. In other words, a customer will ask us to identify a die normally. It is entirely feasible that they could have asked for it to be D-2 or any other number. But for their own records, or in other words they will specify a die is A-1 or something else. This I remember because it was a booster die and it was later changed.

Q. This A-1 wouldn't have to have come from a die you made, would it? In other words, once you delivered a die to a customer he could put A-1 on there, could he not, on the die? A. He could.

Q. Or anything else he wanted?

(Testimony of Paul Edward Lenk.)

A. Well, he did this, that is correct (indicating).

Q. Yes. In other words, the customer puts on all this indicia up here as to the style number? [52]

A. Yes.

Q. Now it is equally feasible that a customer could put anything on the side he wants to, isn't it?

A. In other words, to do so he would have to weld this up and recut and then restamp, and I don't believe the die shows evidence of mutilation or changing.

I will say that there isn't anything that isn't possible, but let's say it isn't feasible.

Q. Now the A-1, as I understand it, then, merely applies to the outline portion of the frame?

A. No, all it identifies is that it is a California license frame and that it was the booster type or the light weight frame. That is all it actually identifies.

Q. So the A-1 doesn't mean whether it is a 1-line or a 2-line? A. No, that is true.

Q. Nor does it indicate whether the insert was curved like this Exhibit C or straight across?

A. None whatsoever.

Q. Or even like the Shell, Exhibit D?

A. That is right. It just merely identifies primarily a size and a state. In other words, the size indicating the over-all length, the location of the holes, what we call the lugs, the lugs and lug holes and the frame, the general configuration of the frame. But this particular die will make [53] several designs of frames of this weight and thickness.

(Testimony of Paul Edward Lenk.)

There are other California frames of the same general size, but the thickness and the lugs will change and the design of that is different.

Q. So that the A-1, your die number appearing on the end of Exhibit C, goes only to the style of the frame without regard to what kind of inserts it has? A. That is correct.

Q. Or how many, or what size it is?

A. That is correct.

Q. So if you had one for a different state, a different size, you would have a different indicia?

A. It might be M-1 or M-2, or something of that nature.

In other words, this is primarily to identify, I believe, in manufacturing for companies who produce license frames for more than one state.

Now, the Shehan Manufacturing Company produced license plates for, if I remember correctly, I believe it was 32 states. I will not make a definite statement on that, but I do believe it was 32 states that were covered by license frames. This just identifies the die that would cover the State of California.

Q. There is nothing else on that frame that indicates your manufacture or the particular die, is there?

A. No, the die itself may contain our insignia, but [54] not inasmuch as this is the customer's product and our name should not appear on the customer's product.

Q. Once you make the die and it goes out of

(Testimony of Paul Edward Lenk.)

your possession, and that is merely what we should call a general form die, then the customer—

A. No, it is a specific form die. It does a specific job.

Q. For a specific size, or one size?

A. That is correct.

Q. And then you supply the customer any number of different inserts or other things that he wants to use?

A. The general name is called headers, but headers with inserts. For example, this particular frame doesn't have the second header—I am sorry, it does too—this frame has both headers and inserts, interchangeable headers and interchangeable inserts, and this insert or header will be interchangeable this way and this way (illustrating).

Sometimes it is necessary, from the standpoint of strength, to increase the size of one to another.

Q. Now, there is nothing on this frame, Exhibit C, to indicate that you made this particular La Jolla header for Shehan, is there?

A. Other than that the style of the header is rather characteristic, we will say, of our particular style of engraving. But I could not make a definite statement that we [55] made this specific insert, other than it carries our characteristics.

Q. And that is true of the lower header, I take it, the La Jolla? A. That is correct.

Q. The lettering is generally like yours?

A. That is right. It carries our characteristics.

Q. Beyond that you have no knowledge as to

(Testimony of Paul Edward Lenk.)

whether the particular header, La Jolla, or this particular header—

A. Which La Jolla are you referring to?

Q. One is "La Jolla Chevrolet" and the other "La Jolla" without anything. Now you don't know whether that was made by you or somebody else?

A. That is correct.

Q. Or when it was made?

A. We could establish, if we were able to get the inserts to see if they matched, and if your indicia was on the insert then I could establish that we made this particular insert. But at present I don't have the evidence to substantiate it.

Q. Now with respect to Exhibit D, is there anything on this frame, Exhibit D, that indicates to you that it was made from a die made by you?

A. Other than I mentioned a few moments ago, that I stood by the die casting machine when that particular frame [56] was cast.

Q. In other words, you have a present recollection that you made a frame with a Shell insignia on top of it?

A. We built the dies. The die was built on Pearl Harbor Day. That is why I remember it very specifically, the day that we were bombed at Pearl Harbor.

Q. But there is nothing on this frame here to indicate that?

A. No, there would be nothing to indicate other than my personal knowledge and recollection.

(Testimony of Paul Edward Lenk.)

Q. Do you have any records or anything that substantiates that?

A. I will go back to my original statement, nothing prior to 1950.

Q. Now this doesn't carry any die number, does it?

A. No, this die was built specifically for the Shell Oil Company, and it was—I believe the price of the tooling was amortized into the price of the merchandise.

Q. Was this sold to Shehan Manufacturing Company also? A. Yes.

Q. Did you make the die for the shell, the picture of the shell?

A. Yes. In fact, if you so desire, that master—we call it a master—of the engraving is available at our plant. [57]

The Court: The engraving?

The Witness: Your Honor, whenever we do what we call a profile, that is, in which the letters or configuration carries a 3-dimensional plane, it is necessary to make first a mold, either in the correct form or the inverted form. That, in turn, is duplicated on a machine called a panographic or mechanical duplicator, and in most cases where we have had to make molds or masters those will be kept, and I am positive that that is at the plant.

The Court: That you have it yet?

The Witness: Yes, and if it is necessary I will produce the same. [58]

* * *

(Testimony of Paul Edward Lenk.)

Recross-Examination

By Mr. Fulwider: [61]

* * *

Q. As I remember your testimony, the only thing that made you think that you perhaps supplied the inserts "La Jolla" for frames similar to Exhibit C was that the lettering was similar to yours?

A. That is correct. The lettering bears the style design that we normally use.

The only manner in which I can positively identify that this particular frame was cast from our inserts would be to see inserts that we produced to see if they matched identically, less the shrinkage.

Q. You have no recollection or knowledge as to when you made the La Jolla inserts for Shehan or anybody else?

A. Not specifically other than it will be dated, because during different years changes are made. There are certain modifications on dies and die inserts, what we call headers, that make this die inoperative in previous dies. That is possible and has happened numerous times.

For example, if for any reason this center distance between the lug locations changes, and we will say that they become smaller, the distance becomes shorter, this frame or this insert would not be operative in that particular frame. So we will say, for example, that in this particular case—California has not but other states have—they have changed their

(Testimony of Paul Edward Lenk.)

lug locations or the locations of the holes, and in many [62] cases it has only been a distance in which, we will say, it came into the inserts and made it not feasible, so the die had to be revamped and new header plates made and new inserts also with identically the same matter but condensed to fit the new existing space.

Q. But as to these two inserts you have no knowledge as to when, if you made, the insert dies from which these inserts of Exhibit C were made, you have no way of knowing?

A. I have every reason to believe that inasmuch as we made the headers and die modifications.

Q. But you don't know?

A. But I don't know, that is right.

Q. And there is nothing on this exhibit that helps you?

A. That would positively identify it, no.

Mr. Fulwider: I think that clears it up, your Honor.

* * *

CHARLES F. WEBB

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [63]

Direct Examination

By Mr. Young:

Q. Mr. Webb, are you here today in response to a subpoena? A. Yes, sir.

Q. That subpoena asked you to bring with you

(Testimony of Charles F. Webb.)

any records that you might have showing construction of dies, is that right? A. Yes.

Q. For a certain date? A. Yes.

Q. What is your occupation, Mr. Webb?

A. I am an engraver. We do engraving and we make an occasional mold.

Q. Do you make frames or dies for license plate frames? A. Yes, we do.

Q. Look at Plaintiff's Exhibits 2 and 3, which I have placed before you, and tell me, if you can, whether you made the dies for either or both of those.

A. (Examining exhibits): We made this [64] one.

Q. And that one that you are referring to is Exhibit 2? A. That is right.

The Court: The Eddie Nelson plate?

The Witness: Yes.

Mr. Young: Your Honor, these are both Eddie Nelson plates.

The Witness: I will look at this one. (Examining.)

The Court: Exhibit 2 is Mr. Brown's plate?

Mr. Young: Yes.

The Witness: We have no identification on this one, but I think we made the die. It looks like our job. We also made the insert. This looks like ours. That I can identify from the insert itself on this one. Unless this one is here I wouldn't know. (Examining exhibits.)

(Testimony of Charles F. Webb.)

Q. (By Mr. Young): Mr. Webb, as a diemaking, would you look at those carefully and tell me whether they came out of the same die cavity, those two plates?

A. (Examining exhibit): Well, no, they didn't.

Q. How can you be sure?

A. Well, there is a difference right here. (Indicating.)

The Court: They are different. I can see it. [65]

* * *

Mr. Fulwider: We will concede they are not.

Q. (By Mr. Young): Mr. Webb, did you bring with you any papers to show when you made the Brown die, Exhibit 2?

A. I have an invoice here.

That is the invoice. (The document referred to was passed to counsel.)

Q. Do you recall the circumstances of the placement of the order for that Brown die, Exhibit 2?

A. Well, he wanted a die made. He gave me this.

Q. By "he" are you referring to the defendant Robert W. Brown?

A. Well, Mr. Brown came in, both Mr. Browns, another Brown, Robert Brown is the one I have been referring to, and he is the one that wanted the die made.

On this job we started out with a drawing on a piece of this cardboard made by—

The Court: By "on this job here" that is Exhibit 2?

Q. (By Mr. Young): You are referring to the Brown exhibit, No. 2? A. This one right here.

(Testimony of Charles F. Webb.)

The Court: Is this your die?

The Witness: I can tell you if I can look at it.

(Examining exhibit.)

The Court: That is Exhibit E. [66]

A. Yes, this is our die. Our name is on the back of it.

The Court: And this is the insert for Exhibit 2, the Eddie Nelson plate?

The Witness: Yes, I am sure it is.

Mr. Young: I will ask the clerk to mark this document, which purports to be an invoice No. 10284, bearing the name R & W Stamp Works as the defendants' exhibit next in order.

The Clerk: Exhibit F.

(The document referred to was marked Defendants' Exhibit F for identification.)

The Court: What is that, the invoice?

Mr. Young: The invoice.

Then I have a shipping memo with the same identification, the shipping memo is white.

The Court: That will be F-1.

(The shipping memo referred to was marked Defendants' Exhibit F-1 for identification.)

Q. (By Mr. Young): Mr. Webb, I hand you Exhibit F and I ask you whether this states on it that it relates to 1 only No. 2 header. $1\frac{1}{4}$ by $7\frac{3}{8}$ by $1\frac{1}{2}$. A. You mean it refers to this job here?

Q. Yes, does it refer to that?

A. To the mold, yes, sir. [67]

Q. And do the dimensions—

(Testimony of Charles F. Webb.)

The Court: To "this"?

The Witness: That is the insert.

Q. (By Mr. Young): Do the dimensions I referred to refer to this particular insert, Exhibit E, is that correct?

A. That insert refers to this invoice, $\frac{1}{4}$ by $7\frac{3}{4}$ by $7\frac{1}{2}$.

Q. That would be the actual dimensions of this particular insert, Exhibit E? A. Yes, sir.

Q. You can identify that invoice? A. Yes.

Q. That is the invoice you sent to Robert Brown, is that right? A. That is right.

Q. To pay for work on this particular job, working up the die for Exhibit 2?

A. That is for the mold, yes, sir.

Q. And also for the insert for the mold?

A. No, the inserts are different from the molds. This pertains just to this mold.

The Court: What pertains?

The Witness: This invoice.

The Court: I thought the invoice described this insert, [68] the size of it.

The Witness: This mold has two headers in it.

The Court: I see. To furnish material machinery for California die. That is only one item on here.

This invoice is for the whole business?

The Witness: It is for the mold, your Honor. It is not for the inserts, not for the engraved inserts at all. They are separate from the mold.

The Court: In other words, this invoice does not cover the insert Exhibit E?

(Testimony of Charles F. Webb.)

The Witness: No, sir, this is extra besides the mold.

The Court: And the reason that is on there is——

The Witness: To show the size that he is getting.

The Court: ——to describe the size of the insert for which the mold is made?

The Witness: Yes, your Honor.

The Court: Very well.

Q. (By Mr. Young): I hand you Exhibit F-1 and ask if you can identify that as a shipping memo.

A. Yes, that is.

Q. And you sent that shipping memo to Robert Brown, or that relates to the shipment to Robert Brown? A. Yes, that is right.

Q. Can you locate anything on this shipping memo that [69] has to do with molds or inserts for Exhibit 2?

A. I don't exactly know what you mean.

Q. Is there an item on this list——

A. That describes this mold?

Q. Yes.

A. Well, the one at the bottom. This says, "1 mold stamped Robert W. Brown." This is the one we made because we made a mistake in the spelling of Brown. It should have been B-r-o-w-n and it is spelled B-r-a-u-n.

I think this is the solid die. This is a solid die. There is cutouts for the inserts in there. There was no header in this die. This is a plain die with just cutouts for the inserts to go in.

(Testimony of Charles F. Webb.)

This probably was a cutout. You see the crease is in here for a header (indicating).

Q. And it is your recollection that Mr. Brown did not bring you a frame and have you build a die exactly like it?

A. No, I don't think he ever did. [70]

* * *

MERLE E. BROWN

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [72]

* * *

Direct Examination

By Mr. Young:

Q. Mr. Brown, are you connected with the Monarch Die Casting Company? A. Yes.

Q. How long have you been connected with that concern? A. Since 1950.

Q. Did you ever go with Mr. Robert W. Brown, the defendant, to the place of business of Mr. Webb?

A. Yes.

Q. Do you recall what took place at the meeting or meetings with Mr. Webb?

A. It was discussing the making of several die cast molds for license frames.

Q. Did you assist Mr. Robert W. Brown in telling Mr. Webb what you wanted in the way of a die?

A. More in the gating and the die mount and not in the actual cavity.

(Testimony of Merle E. Brown.)

The Court: What is the gating?

The Witness: That is where the metal flows into the casting. [73]

Q. (By Mr. Young): You were concerned more with the technical details of making the dies and the castings rather than the ornamental design, if there was any, of the plates themselves?

A. That is right, yes.

Q. Do you recall that it was a 2-line frame that was ordered? A. I think it was a 2-line frame.

Q. Do you know whether you gave Mr. Webb a frame to copy?

A. If there was any samples submitted, I didn't see them. I don't know if there was any samples.

* * *

JOSEPH C. BESSOLO

called as a witness by and on behalf of the defendants under Rule 43b, having been first duly sworn, was examined and testified as follows: [74]

* * *

Direct Examination

By Mr. Young:

Q. Mr. Bessolo, would you state your [78] occupation, please?

The Court: Let me see. You are calling this witness under the provisions of Rule 43(b)?

Mr. Young: Yes, your Honor, as an adverse witness.

The Court: Is he an officer, director or employee of the plaintiff?

(Testimony of Joseph C. Bessolo.)

Mr. Young: He is the inventor in this case, and he also was an owner up until the time that the ownership was taken over entirely by Mr. DeBell.

The Court: If the plaintiff does not have any objection, it does not make any difference to me.

Mr. Fulwider: I think we have no objection, under the circumstances, because he was a co-plaintiff up until a week or so ago.

The Court: Very well.

Q. (By Mr. Young): Mr. Bessolo, would you state your occupation?

A. I am in the plating business, automotive.

Q. Do you run a plating shop at the present time? A. Yes.

Q. Do you do plating work on license plate frames? A. Yes, I do.

Q. Do you do plating work on other types of things? A. Yes.

Q. Do you do the plating work for U. S. License Frame [79] Company?

A. I did up to about two weeks ago.

Q. Do you consider yourself to be an artist?

A. No.

Q. Are you able to make drawings with pencil or pen?

A. I can make rough sketches, but I don't claim to be a designer.

Q. Did you make drawings which resulted in the design of the patent in suit?

A. Yes, I made rough sketches.

(Testimony of Joseph C. Bessolo.)

Q. Do you know where those sketches are?

A. At the time I don't, no.

Q. You are the Joseph C. Bessolo named as the patentee of the patent in suit?

A. That is right. [80]

* * *

Q. Mr. Bessolo, I hand you exhibits J and J-1—

The Court: What do they purport to be? What is it a photostat of?

Mr. Young: It is a photostat of a Western Auto Supply catalog, and I believe that counsel will stipulate that this was published in 1942 and was found in the Los Angeles City Library.

Mr. Fulwider: We will so stipulate, your Honor.

Q. (By Mr. Young): Mr. Bessolo, on the second page I call your attention to a picture of a license plate holder which shows "Los Angeles" written out on the frame. Do you find that?

A. Right here?

Q. Yes. A. Yes.

Q. I call your attention to the enlargement, J-1, which is enlarged from that portion of this exhibit. Now at the time you made your invention, as you say, Mr. Bessolo, were the single line frames well known and in use in the trade such as shown in this Exhibit J and J-1? A. The single, yes.

Q. Was your company at the time of your invention [88] engaged in making and selling these single line frames? A. Yes.

(Testimony of Joseph C. Bessolo.)

Q. Was the single line available both top or bottom rather than top and bottom?

A. I don't quite remember.

Q. Were they available on the top? Could you buy a frame from your company at that time, at the time of your invention, which had indicia, the name of the man and the name of the town, on the top?

A. Yes.

Q. Could you buy one where that indicia was on the bottom?

A. I guess you could. I am not sure.

Q. You don't know whether your company made them or not, is that right?

A. That is right. [89]

* * *

PAUL D. HUCKELBURY

recalled as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows: [91]

* * *

Cross-Examination

By Mr. Fulwider:

Q. I am a little confused on this master die. As I understood it from the witness this morning, Mr. Lenk I believe it was, the master die is only this portion, the end portions of the frame, and had no relation to the inserts, the headers.

You say that the master die includes a complete periphery?

(Testimony of Paul D. Huckelbury.)

A. Not necessarily because—you don't know too much about tooling?

Q. That is right. [93]

* * *

Q. Referring to Exhibit C?

A. Referring to Exhibit C—you might change that to any design that you might wish.

In this particular die here, I think you will notice on the back it has "Style 458-R." We could very conceivably run a Style 450 which is like this frame right here (indicating). We could run a 450. We have in the neighborhood of 200 or 300 different styles of 2-line frames. They can be run either as single line or 2-line frames. They may have a Chevrolet emblem at the top or any various shape or size.

Q. If I understand you correctly, the master die, when you speak of outer and inner peripheries, you are speaking of this standard length so that the master die comes straight across here at the top and at the bottom, and then you can put any kind of insert at the top or bottom.

A. That is correct.

Q. So referring to this Exhibit C, when you say you have a master die that is without inserts, isn't it?

A. The master die is the die without the inserts. We do have those particular inserts, though, that go in the master die. [94]

* * *

(Testimony of Paul D. Huckelbury.)

Q. It doesn't show anything as to what kind of an insert it was. You could have a 2-inch insert or a 1-inch insert or a no-inch insert.

A. That is right. It is made expressly for 2-line frames. That is why it was cut out like that.

Q. It is made to be used with any number of inserts? A. Yes.

Q. Or with no inserts?

A. Yes. Because no tool maker would make a die and cut a pocket in the bottom if he didn't have any idea of running a 2-line frame because you have extra labor in removing these parting lines that you will notice in this casting.

Q. But it has to be a cavity such as can hold any one of any kind of an insert you want to put into it? [95] A. That is correct.

* * *

Recross-Examination

By Mr. Fulwider: [100]

* * *

Q. If I understood your testimony correctly, you can put one or more inserts in any one of these master dies, can't you, different styles?

A. That is right.

Q. Now do you have any memorandum or records or notes or anything that you use to refresh your recollection here that these various dies you speak of were there at the Benmatt Organization before you went into the Service?

* * *

(Testimony of Paul D. Huckelbury.)

The Witness: I do not have any access to any records, and never have had.

Q. (By Mr. Fulwider): You have no personal memorandum or notes or photos or anything like that that you have used to refresh your recollection?

A. No; I have no records. [101]

* * *

Q. This master die setup like you use it, though, you can use that interchangeably, can't you, to make double-header or single-header frames?

A. The die that I refer to, yes. Our latest tooling isn't made that particular way.

Q. The ones you were speaking of earlier, when you and I were talking?

A. Yes, of which those are the samples.

Mr. Young: One more question.

Redirect Examination

By Mr. Young:

Q. Before you went into the Service was it common for you to furnish license plate frames which were single lined and which might have that single line either on the top or the bottom?

A. Oh, yes. It all depends on the automobile that it was manufactured for, like in this particular year, the Plymouth won't take a top down because the frame is—may I have one of the frames?

(The exhibit referred to was passed to the witness.)

(Testimony of Paul D. Huckelbury.)

The Witness: You take this particular frame here, you don't have enough clearance on a Plymouth to put the frame this way. (Illustrating.) [110]

Q. (By Mr. Young): The frame you are referring to is Exhibit K?

A. Yes. In this particular frame, if you mount it on the bracket you don't have the clearance between the light bracket, and it has been that way for years, so we insert it.

* * *

GODFREY BELL

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [114]

* * *

Direct Examination

By Mr. Young:

Q. Mr. Bell, were you ever connected with the Shehan Manufacturing Company? A. Yes.

Q. During what years?

A. From around about 1926 to about—well, I am still connected with the company. I mean it still hasn't been liquidated completely.

Q. Did the company ever manufacture license plate frames? A. Yes.

Q. When did the Shehan Manufacturing Company stop manufacturing license plate frames?

A. In about 1943.

(Testimony of Godfrey Bell.)

Q. Did you sell your business to the Beninatt Organization?

A. No; we turned it over to the Aero Specialty company who, in turn, I believe, sold out to the Beninatt Organization.

Q. When did you make this sale to the Aero Specialty Company?

A. It was around in 1947, I believe, in the [112] neighborhood of that.

Q. Do you recall the type of frames that were made by the Shehan Manufacturing Company?

A. Yes.

Q. Did you make single line frames?

A. Yes.

Q. Could the single line be on either the top or the bottom? A. Yes.

Q. Did you ever make 2-line frames?

A. I believe so, yes. I am sure we did.

Q. Did you make them before you stopped manufacturing in 1943? A. Yes.

Mr. Young: That is all.

The Court: Cross-examine.

Cross-Examination

By Mr. William K. Young:

Q. Mr. Bell, you were identified with this Shehan Manufacturing Company between 1926 and for some years thereafter? A. That is right.

Q. What was the nature of this company, was it a corporation or a partnership?

(Testimony of Godfrey Bell.)

A. It was a partnership and I was one of the partners.

Q. Were you a general partner or limited partner? [113]

A. I was a general partner.

Q. How many partners were there?

A. Just two.

Q. Did you have any regular hours of employment there in the place of business from 1926 on?

A. Well, not what you would call regular. I mean I didn't have to punch a clock or anything like that. I was there every day, though.

Q. What was your identity with the company, more of a financial nature?

A. No. In fact, I managed the company.

Q. What was the general business of the company?

A. It was manufacturing automotive accessories. We did stamping and die casting, plating.

Q. With reference to the license plate frames that you manufactured, what percentage of the frames represented the other products manufactured by your company?

A. Well, it changed from time to time. In 1927 it was a very small part of our gross business. But toward 1938, '39, '40, it was a major part of our business.

Q. By "major," you would say 80 per cent or better? A. At least, yes.

Q. Did you continue to be active at that time with the company? A. Yes. [114]

(Testimony of Godfrey Bell.)

Q. Were you general manager then?

A. Yes.

Q. You observed the progress made in the design of license plate frames, did you, from time to time as the years passed?

A. Yes, we would naturally see that there was a lot of designs that we would sort of make ourselves, changes.

Q. Now, sir, how is it that you place with some measure of accuracy, as you seem to here, with reference to 1938, that that is the time you manufactured double header frames?

A. Well, I didn't say 1938. I was asked if we made a double line frame, and I said that we did. Now, whether it was in 1938, I can't remember exactly.

Q. Was this incident in 1938? How do you happen to recall that? Did you go into production on it?

A. Well, as I said, I didn't state the time or, in other words, give any date that we started to make the 2-line die. I said that we made it. I was asked if we had made it, and I said yes, but I put no date on it at all.

Q. Does your memory serve you as to when you did make it?

A. No; I couldn't tell you just exactly when it was, whether it was in 1937, '38 or '39.

Q. Or whether it was possibly later?

A. Well, no, I don't think it was later, very much [115] later.

(Testimony of Godfrey Bell.)

Q. Are you relying solely on your memory to relate the facts you just have?

A. That is right.

Q. Have you had any opportunity to refer to any documents that would refresh your memory in any fashion?

A. No, I haven't. I have no records available at all. All my records of that were all destroyed.

Q. What is there in your memory that refers you to these years to the exclusion of other years?

A. Because we discontinued all manufacturing in '43, approximately '42 or '43, and I feel sure it was at least about three or four years before that.

Q. Do you recall that because you saw it personally? A. Yes.

Q. And you recall the one that you made was an experimental model?

A. No, no. We sold them. They were in production.

Q. In 1937, '38 or '39?

A. Somewhere in that neighborhood.

Q. Were they sold locally or elsewhere?

A. I would say locally up and down the Pacific Coast.

Q. Does your memory serve you that that is so?

A. In other words, wherever our sales organization went at that time, why, they were sold. [116]

Q. Would you say that 80 per cent of your production at that time represented these double header frames?

(Testimony of Godfrey Bell.)

A. No; I didn't say that at all. I said that license frames was about 80 per cent of our total business.

Q. What would be your present estimate as to the percentage of double headed frames?

A. I would not be able to give you that information at all.

Q. Is it possible that you could have been mistaken as to the years in the 30's than it might have been in the 40's? A. No, I don't think so.

Q. Do you recall on which side, the top or the bottom, this double-header insert was present?

A. They were on both top and bottom. In other words, there was reading matter on the top and bottom. In other words, what would be an insert at the top and an insert at the bottom of the frame. [117]

* * *

Redirect Examination

By Mr. Young: [119]

* * *

Q. And the last frame before you?

A. That is Exhibit D. Yes, we made a frame similar to this. Whether this is the one, I don't know, but we made a [120] master die just for this particular frame. In fact, this looks like this was the frame we made. This was made for Dura Products Company. They were our distributors back East. [121]

* * *

ROBERT SORENSEN

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Young:

Q. Mr. Sorenson, you are here by subpoena, are you not? A. Yes, sir.

Q. Did you produce any documents that the subpoena asked you to bring in? A. Yes, sir.

Q. May I have them?

A. (Producing documents.)

Q. (By Mr. Young): While counsel is examining the papers you brought [122] in, I will hand you Exhibit D. I ask you if you know who made that frame?

Mr. William K. Young: Your Honor, as long as we are engaged in examination, I think he should suspend until we get through.

Mr. John Young: Very well. I am sorry.

I ask that these papers be marked for identification.

The Court: As one exhibit?

Mr. Young: Yes, with the letter followed by numbers indicating which is which.

The Clerk: Exhibits O-1 to O-4.

(The exhibits referred to were marked Defendants' Exhibits O-1 to O-4, inclusive, respectively, for identification.)

(Testimony of Robert Sorenson.)

Mr. Young: Exhibit O-1 is a statement dated October 1 of the Angelus Die Casting Company.

Mr. Fulwider: What year?

Mr. Young: 1947.

Exhibit O-2 is an invoice, No. 704, dated September 26, 1947.

Exhibit O-3 is a second statement, dated September 19, 1947.

Exhibit O-4 is a second invoice, dated September 19, 1947.

The Court: Very well.

Q. (By Mr. Young). Can you identify these four papers which I hand you, [123] Exhibits O-1, -2, -3 and -4? A. Yes, sir.

Q. Where did they come from?

A. From the files at my shop.

Q. And what is the name of your shop?

A. Angelus Die Casting Company.

Q. How long have you been associated with the Angelus Die Casting Company?

A. Since 1946.

Q. I previously called your attention to Exhibit D. Is there any connection between Exhibit D and these invoices and statements? A. Yes, sir.

Q. Will you tell us what that connection is?

A. We made a casting similar other than it wasn't for this particular size, for the Benmatt Organization.

Q. And that is shown on what exhibit?

A. D.

(Testimony of Robert Sorenson.)

Q. Is it also shown on any of the papers in your hand? A. Yes.

Q. Which one?

A. On the statement O-1, O-2, the invoice, O-3, the statement and O-4, the invoice.

Q. What do those statements and invoices show?

A. That we made the castings for this Benmatt Organization [124] on these dates.

Q. Were the castings similar to that in Exhibit D?

A. Exactly the same other than these are a little bit longer. The ones that we made were for Nevada and the other one I assume is California.

The Court: Hold up Exhibit D.

The Witness: (Exhibiting.)

The Court: That is the Shell frame?

The Witness: Yes.

The Court: You made them for Nevada?

The Witness: Nevada and I assume the other one—

The Court: They have different sizes for different states?

The Witness: Yes, sir.

The Court: You made the castings, you did not make the die?

The Witness: No, sir; we made the parts. And also for California.

Q. (By Mr. Young): Do you know of any 2-line frames that were made before you made those castings, Exhibit D?

(Testimony of Robert Sorenson.)

A. Do I know of any 2-line frames? I wasn't in the frame business, I was in the die casting business when I made these castings.

Q. So your answer is no? [125]

A. Yes, sir. [126]

* * *

Mr. Young: This, your Honor, is the deposition of Stanley M. Olson, taken on behalf of the defendants in the above-entitled case, before James A. Werner, Notary Public of Hennepin County, Minnesota, on the 19th day of January, 1956, commencing at approximately 10:00 o'clock in the forenoon, at 950 Pillsbury Building, Minneapolis 2, Minnesota, pursuant to notice.

Appearances: Lyon & Lyon, Attorneys at Law, 811 West Seventh Street, Los Angeles 17, California, and Williamson, Schroeder, Adams & Meyers, Attorneys at Law, 950 Pillsbury Building, Minneapolis, Minnesota, by John W. Adams and H. Dale Palmatier, 950 Pillsbury Building, Minneapolis, Minnesota, appeared for and on behalf of the defendants.

Fulwider, Mattingly & Huntley, Attorneys at Law, 5225 Wilshire Boulevard, Los Angeles, California, and Paul, Moore & Dugger, Attorneys at Law, Midland Bank Building, Minneapolis, Minnesota, by Robert P. White, Midland Bank Building, Minneapolis, Minnesota, appeared for and on behalf of the plaintiff.

DEPOSITION OF STANLEY M. OLSON

“Whereupon,

“STANLEY M. OLSON
of lawful age, being called, sworn and examined as
a witness, deposeth and saith:

“By Mr. Adams:

“Q. Mr. Olson, will you state your home [127] address, please?

“A. 4728-17th Avenue South, Minneapolis.

“Q. You previously gave your full name as Stanley M. Olson, O-l-s-o-n? A. Right.

“Q. Where do you work, Mr. Olson?

“A. The Douglas Company.

“Q. What is the address of the Douglas Company? A. 620-12th Avenue South.

“Q. And what is your position presently with the Douglas Company?

“A. Vice President in charge of sales.

“Q. And how long have you been employed by the Douglas Company? Since what date?

“A. November 17, 1947.

“Q. What was your position when originally employed?

“A. I was employed as sales manager.

“Q. What business is the Douglas Company engaged in?

“A. We manufacture, in a broad sense, advertising specialties.

“Mr. Adams: Excuse me just a second.

“(Discussion off the record.) [128]

(Deposition of Stanley M. Olson.)

“Mr. White: May I have that last question and answer again, please?

“(The last question and answer were read by the reporter.)

“Q. (By Mr. Adams, continuing): What specific items do you manufacture in the nature of automobile accessories or advertising material?

“A. We make emblems of Scotchlite, Krome Kal, metal emblems and license frames.

“Q. Has the Douglas Company manufactured and sold license frames since you began working for them?

“A. We were tooling for our first frame when I came with the company on November 17, 1947. Then we made our first sales in December, 1947.

“Q. Had you prior to tooling up for this frame made frames of any other type for licenses?

“A. No, we had not.

“Mr. Adams: I think this should be marked Defendants' Minneapolis Deposition Exhibit 1 in order to identify properly. Would you so mark it, please?”

The Court: And it was marked and it is now Exhibit A-1.

The Clerk: Yes, your Honor.

“Q. (By Mr. Adams, continuing): Mr. Olson, I think that is the exact one that was [129] photostated.

“Q. (By Mr. Adams, continuing): Mr. Olson,

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I hand you Defendants' Deposition Exhibit 1 and ask you to identify that, if you will, please?

"A. Well, this is the type of mailing piece that we generally prepare which also serves as a salesman's catalog sheet.

"Q. The pictures shown in that piece exemplify the frames which your company sold since starting in the frame business? Is that right?

"A. Yes.

"Q. The license frame business? A. Yes.

"Mr. Adams: Mark these, please."

The Court: And they are now Exhibits A-2, A-3 and A-4. They follow the same number except with the letter "A" in front of them.

"Q. (By Mr. Adams, continuing): Mr. Olson, I hand you Defendants' Exhibit No. 2 and ask you to identify that, if you will, please?

"A. Well, this is a sales order copy which is made up from the original salesman's order.

"Q. I will ask you to identify Exhibit 3.

"A. This Exhibit 3 is a copy of the original order from which the sales order was typed.

"Q. From whom was this order taken? Who was [130] the customer?

"A. The customer was Kobb Motor Sales, Incorporated, Saint Paul.

"Q. Would you indicate the address, please?

"A. 654 University Avenue.

"Q. Toward the bottom of both Exhibits 2 and 3 the words 'Kobb Motor Sales' and 'Saint Paul' ap-

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pear. Would you explain the purpose of that copy material on both of the exhibits, please?"

Mr. Fulwider: That question I want to object to because there is no foundation laid as yet as to whether or not this gentleman knows anything as to what these various documents purport to show.

The Court: Technically you are correct, there is none yet shown in the deposition, but, as I said, I have read the deposition all the way through and it develops that he is the general sales manager and he testified about these records here being kept under his supervision, so your objection is overruled.

"A. Well, that is to indicate to us the way the customer and the salesman wanted the copy placed on the frame.

"Q. The copy being the printed material, advertising material on the frame? Is that correct?

"A. Yes. [131]

"Q. Would you, from Exhibits 2 and 3, identify the manner in which that copy was to be placed on the frame? You can refer to Exhibit 1, if you wish.

"A. Well, the company name was to be placed on the top part of the frame and the city name on the bottom section of the frame.

"Q. Is the next-to-the-bottom picture in Exhibit 1 an exact copy of the frame as it was actually furnished to Kobb Motor Sales?

"A. Yes, that is an exact copy.

"Q. And was Kobb Motor Sales the first or one of the first customers who bought these license plate

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frames from you? A. Yes, they were.

“Q. Would you state the date indicated on Exhibit 3, please?

“A. This date is December 26, 1947.

“Q. And what does the date indicate?

“A. That is the date that the order was written—taken from the customer.”

Mr. Fulwider: We object.

If your Honor please, I want to make this thing as short as I can. On the other hand, it seems to me, how could this gentleman testify as to what the date on this so-called order blank means? There is no testimony as to whether he took it [132] or that it was the usual practice of the company to take orders on this kind of a book.

The Court: He is the general sales manager and vice president, and he has not testified that he knows how an invoice is made out but do you not think that the court is required to indulge the presumption that this man knows something about what the records mean in his business if he is sales manager?

Mr. Fulwider: I would think he should but nowhere could I find in here that he ever did say so.

The Court: I do not think he did.

However, he testifies at length further here about others of these exhibits and the serial number, because there appears to be a conflict between the date that the order was signed on this Kobb Motor Sales and the date of this invoice.

The objection is overruled.

(Deposition of Stanley M. Olson.)

Mr. Fulwider: Maybe we can shorten it.

May we be considered to object and renew our objection to each one of these as they go along?

The Court: Yes. It may be stipulated that the same objection is made to each one of the questions asked in this deposition of this witness concerning the business records.

Mr. Fulwider: Yes, your Honor.

The Court: As no foundation having been laid.

Mr. Fulwider: That is my point. [133]

The Court: Objection overruled.

“Q. Does the customer’s signature authorizing the order appear on that sheet?

“A. Yes. There is a signature on the bottom.”

Mr. Fulwider: We move to strike that. There is no foundation that he knows who signed it. I mean, that is a little bit more than my continuing objection to business records.

The Court: The portion of the answer will be stricken, after the word “Yes,” because there is a signature on the bottom. That will remain.

“Q. Would you indicate the sales order number and the date on which that order was processed in your office from Exhibit 2, please?

“A. The sales order number is 2606 and the date processed was December 30, 1947.

“Q. I hand you Exhibit 4. Will you identify that, please?

“A. Well, this is an office record where we keep track of all customer orders placed with us; that

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is, all orders placed with us for this particular customer.

“Q. Regardless of what the material might be?

“A. Yes.

“Q. Whether it is license plate frames—— [134]

“A. That is right.

“Q. Or any purchase by a customer is listed on that particular card? A. That is right.

“Q. Will you please reiterate in your own words what information is indicated on this so-called customer card, Exhibit 4, please?

“A. This customer card lists all items that that particular customer may have purchased from us regardless of what the item might be.

“Q. Will you refer to item two on Exhibit 4, please?

“A. Item two is ‘250 Douglas Frames at 78 cents each; sales order No. 2606.’

“Q. And the date indicated on that?

“A. December 26, 1947.

“Q. What does that date indicate?

“A. That indicates the date which they placed an order with us for this product.

“Q. The date of placing the order?

“A. That is right.

“Q. Is there any indication of the copy material on those frames?

“A. Yes. This particular instance gives ‘Kobb Motor Sales, Saint Paul.’ [135]

“Q. What would that mean to someone in your company? What would that mean to you if you

(Deposition of Stanley M. Olson.)

were to interpret that as to the position of the copy on the frame?

“A. Well, that in itself would not be conclusive just as it is stated there. I might say that it is not always the copy as you see—it is not always shown but because this was a new item the girls put that on.

“Q. Is the sales order 2606 the same order as exemplified by Exhibit 2? A. Yes, it is.

“(Defendants’ Minneapolis Deposition, Exhibit 5, was marked for identification.)

“Q. Do you have any frames exemplified on Exhibit 1 as being your number 101 AA at the present time? A. No, we do not.

“Q. I show you defendants’ Exhibit 5 and ask you to identify that, if you will, please?

“A. Well, this is a license frame which we now call No. 104, which has copy on the top and the bottom.

“Q. Is the lettering on this frame generally similar to the lettering that appeared on the [136] Kobb Motor Sales frame?

“A. What do you mean by lettering?”

Mr. Fulwider: May I interpose?

I should make this objection by way of almost a continuing objection, that all of these questions are objectionable as leading. I realize that you can lead your witness on informal things, but I would like to get that objection in the record.

The Court: They are leading but—

(Deposition of Stanley M. Olson.)

Mr. Fulwider: It runs all the way through.

The Court: ——it runs all the way through the deposition, but I do not think the deposition should be thrown out for that purpose. It is a vice in which every lawyer participates.

Mr. John Young: Your Honor, I think that the objection that the question is leading is waived unless it is expressly objected to on that ground at that time. All other objections are reserved. I think the form of the question, unless objected to, is waived.

The Court: There are a number of objections in here, but this objection is overruled anyhow.

“A. What do you mean by lettering?

“Q. The copy work.

“A. Yes. The copy work is similar to what Kobb Motor Sales had. [137]

“Q. Is the general construction of the frame similar to the frame 101 AA?

“A. Exactly the same as far as construction is concerned.

“Q. The only difference is being in the appearance of the upper portion, the upper cross bar of the frame? Is that right? A. Yes.

“Mr. White: If I may, will you please read Mr. Adams' last comment here?

“(The question was read by the reporter.)

“Mr. Adams: I will ask the reporter to mark this as Exhibit 6, please?

(Deposition of Stanley M. Olson.)

“(Defendants’ Minneapolis Deposition, Exhibit 6, was marked for identification.)

“Q. (By Mr. Adams, continuing): I hand you Defendants’ Exhibit 6 and ask you to identify that by number, please, and date.

“A. This is another sales order, No. 2550, and it is dated 12-19-47.

“Q. Now, the actual sale there is immaterial. My next question is, as to the series of your sales order numbers, have they been consecutively numbered through this period of way December 1st through February 28th in 1947 and '48? [138]

“A. Yes. These are just sales order numbers that we take as they are typed and order them in consecutive numbers. In other words, they are just taken off a pile of forms.

“Q. In other words, as the dates and numbers indicate, this order was in the same series as Order 2606 and was written up in December of 1947?

“A. Yes.

“(Defendants’ Minneapolis Deposition, Exhibits 7 and 8, were marked for identification.)

“Q. I hand you Exhibit 7 and ask you to identify that, if you will, please?

“A. This is another sales order, No. 2757. The order date is January 16th with the date of the sales order being January 20th.

“Q. What year?

“A. 1948; made out for Lambin Motors.

(Deposition of Stanley M. Olson.)

“Q. Lambin—L-a-m-b-i-n?

“A. Yes, Lambin Motors, Incorporated, 3006 West 50th Street, Minneapolis.

“Q. Has the ownership or the name of that customer been changed since the date of that order?

“A. Yes. This company is now known as the Edina Motors.

“Q. I hand you Exhibit 8 and ask you to [139] identify that, please?

“A. We have here the customer card similar to that described previously for Kobb Motors which gives and lists all of the items that this customer, including his successor, has purchased from us.

“Q. I note that the name of the customer has been changed on the top. Would you explain that quickly, please?

“A. We do that just changing the customer name on the original customer card because it does indicate what that customer has previously purchased.

“Q. Rather than make out a new card?

“A. Yes.

“Q. I refer to the third item on the customer card. Would you identify that, please?

“A. It is listed as ‘250 Britelite frames; sales order 2757; dated January 16, 1948.’

“Q. That is the same sales order as exemplified in Exhibit 7? Is that correct? A. Yes.

“Q. I refer to Exhibit 7 and ask you to identify the copy indication on Exhibit 7, if you will, please?

“A. This list is ‘Top line, Lambin Motors, Inc.;

(Deposition of Stanley M. Olson.)

bottom line, Minneapolis,' and then below [140] that it says, 'Similar to Kobb layout.'

"Q. Now, I refer to the price list indicated in Exhibit 1. Would you identify from that price list the particular item number that is listed thereon with respect to the Lambin Motors sales order?"

Mr. Fulwider: Your Honor, I think a further objection should be made there. There has been no date yet established for this Exhibit 1, and how he can testify that a particular sale refers to a particular price list, there is absolutely no foundation for that question or any tie-in of the exhibit, such as these cards, Exhibit No. 1.

The Court: There is no date in the deposition given for the coming into existence of Exhibit No. 1.

Mr. John Young: I believe that is correct.

The Court: I will sustain the objection to the question on page 12, line 3, and on page 12, line 9 down to line 16.

"Q. (By Mr. Adams, continuing): Would you state briefly how the copy is put on? For example, the merely embossed frames?

"A. You mean the procedure by which this is applied; the manufacturing process?

"Q. Is it a printing operation? Is it a silk screen—how do they work it?

"A. Well, all of these frames are a silk [141] screen process.

"Q. All right. Now, distinguish between the Britelite, which costs, I see, just a little bit more than the embossed, and the embossed?

(Deposition of Stanley M. Olson.)

“A. Well, a Britelite frame is processed twice: First, the background color, and then the copy, and it is dipped in beads to make it reflect at night. An embossed copy is processed once and the letters are raised by a die, in the embossing process.

“Q. There is no reflectorized material on the embossed? A. No.

“Q. And the purpose of the glass beads is to reflect at night on the Britelite? A. Yes.

“Q. Against the name? A. Yes.

“Mr. Adams: Would you mark that as Exhibit 9?

“(Defendants’ Minneapolis Deposition, Exhibit 9, was marked for identification.)

“Q. (By Mr. Adams, continuing): I hand you Defendants’ Exhibit 9 and ask you to identify that, if you will, please?

“A. This is another sales order, No. 2792, [142] dated January 21st for Dependable Motors, Incorporated, 600 South Seventh Street, Minneapolis. It calls for 500-102 license frames, Britelite.

“Mr. Adams: Would you mark this, please?

“(Defendants’ Minneapolis Deposition, Exhibit 10, was marked for identification.)

“Q. (By Mr. Adams, continuing): I will ask you to identify Defendants’ Exhibit 10, if you will, please? A. This is a 102.

“Q. License frame?

“A. Yes, license frame, bottom mount, as we call it.

(Deposition of Stanley M. Olson.)

“Q. Bottom mount, meaning what?

“A. That the large copy is at the bottom.

“Q. Referring back to Exhibit 9, I believe you left off the year when you mentioned the date.

“A. 1948.

“Q. Would you state the whole date, please, again? A. January 23, 1948.

“Q. And then there is another date on there. What does that refer to?

“A. That's the date of the order.

“Q. And in similar manner the processing of the [143] order—

“A. Yes, January 21st is the date.

“Q. The order was taken January 21, 1948, and the order was written up in your office on January 23, 1948? A. That is correct.

“Q. I notice in the picture shown at the top in Exhibit 1 that the Dependable Motors' frame is indicated there; that is indicated as the top mount?

Is that correct? Was that probably the way that was sold?

“A. The picture shown is exactly the way Dependable Motors purchased their frame.

“Q. As exemplified by sales order 2792?

“A. Yes.

“Mr. Adams: Would you mark these, please?

“(Defendants' Minneapolis Deposition, Exhibits 11 and 12, were marked for identification.)

“Q. (By Mr. Adams, continuing): I hand you

(Deposition of Stanley M. Olson.)

Defendants' Exhibit 11 and ask you to identify that by sales order number, date of order, date that the order was written and the customer?

"A. This is sales order No. 2986. It was typed up on February 6, 1948. It was taken on January 29, 1948. It is for Malmon Pontiac, Incorporated, 235 [144] West 9th Street in Saint Paul and it calls for 500 No. 102 frames, Britelite.

"Q. And the price?

"A. The price is 500 at 85 cents each.

"Q. And referring to the price list on Exhibit 1, would you identify that, please?

"A. This is No. 102, Britelite frames, 85 cents each in 500 lots.

"Q. Down toward the lower left-hand corner of Exhibit 11 is an indication of Malmon, Saint Paul, with some other indicating material. What is that, please?

"A. The top line of the copy was to be an Indian head on each end with the word 'Malmon' in the center.

"Q. You don't mean the top line necessarily?"

Mr. Fulwider: We will object to that as leading.

The Court: Objection sustained.

"Q. (By Mr. Adams, continuing): You go ahead and identify it.

"A. The copy is in the large section of the frame—

"Q. I see.

"A. And then on the narrow section is the city name, Saint Paul. [145]

(Deposition of Stanley M. Olson.)

“Q. In other words, referring to Exhibit 10, which is your 102 frame, and inverting it we would get a picture of the Malmon order?

“A. That is right.

“Q. And instead of the word ‘Chevrolet,’ as is shown on Exhibit 10, there would be two Indian heads? A. Yes, Pontiac emblems.

“Q. With the word ‘Malmon’ in between?

“A. That is right.

“Q. And on the bottom cross bar of the frame is the word ‘Saint Paul’? A. That is right.

“Q. Is this the same layout as indicated on Exhibit 12?

“A. This is the copy of the original order from which the original sales order 2986 was written.

“Q. And the copy on the order is written out and signed by the customer? Is that correct?

“A. Yes. This is signed by Malmon Pontiac.

“Mr. Palmatier: Referring to Exhibit 12?

“Mr. Adams: Referring to Exhibit 12.

“(Defendants’ Minneapolis Deposition, Exhibit 13, was marked for identification.)

“Q. (By Mr. Adams, continuing): I hand [146] you Defendants’ Exhibit 13 and ask you to identify that in the same manner as you have in the previous invoices.

“A. This is sales order No. 3032, dated February 13, 1948, which was taken as an order on February 7, 1948. It is for the Downtown Ford Company, 9th

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at Auditorium, Saint Paul. It calls for 500 No. 102 Britelite frames at 85 cents each.

“Q. The copy material indication on the sales order?

“A. The copy indicates ‘Downtown’ with a large ‘Ford’ cut in the center, ‘Company,’ being the top section of the frame, with the words ‘Saint Paul’ for the narrow section of the frame.

“Q. At the bottom? A. At the bottom.

“Q. In other words, the word ‘Ford’ would be embossed similar to the word ‘Ulmer’ on the 102 frame? A. Not embossed.

“Q. Not embossed?

“A. This happened to be Britelite.

“Q. Oh, I see. That is right. I refer to Exhibit 10 as being the 102 frame and that would be—the Downtown Ford frame was sold in the [147] upright position or top mount position?

“A. Yes.

“(Defendants’ Minneapolis Deposition, Exhibit 14, was marked for identification.)

“Q. I hand you Exhibit 14 and ask you to identify that, if you will, please?

“A. This is a customer card for Motor Sales, Incorporated, 1300 Hennepin Avenue, Minneapolis.

“Q. Then will you refer to item 3 on Exhibit 14?

“A. Item 3 refers to Douglas Frames, dated 1-16-1948. Now, I notice it calls for 500 frames and that has been marked out and changed to 100. It

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calls for 500 Kobb, in parentheses, Douglas Frames and that has been scratched out in red and 100 No. 101 has been placed in there. I don't know why the change was made. They are the same frame but they were changed in quantity.

"Q. When you say they are the 'same frame,' what do you mean?

"A. A Kobb frame is the same as a 101 frame, as we previously stated.

"Q. I see. What would the word 'Kobb' indicate with respect to the copy in all probability?

"A. Well, that would refer to the fact that copy was placed on the top and bottom. [148]

"(Defendants' Minneapolis Deposition, Exhibit 15, was marked for identification.)

"Q. I hand you Defendants' Exhibit 15 and ask you to identify that.

"A. This is a 102 top mount Britelite frame.

"Q. I notice that that is a little different size than the 102 bottom mount frame that we referred to as Exhibit 10. Would you explain that, if you will, please?

"A. Well, the various states have different sized license plates and we had to make changes in our dies to get the various states.

"Q. Do you have different end dies perhaps for the narrower plates or is it just a single die? In other words, do you have different sets of die shoes? Explain that a little bit—the manufacture of it.

"A. Well, this frame is made with many parts.

(Deposition of Stanley M. Olson.)

“Q. That is, the die?

“A. The die, rather, and, therefore, we can remove certain parts of the die so that it will better fit in the various states. That is why we made it and designed the frame that way. We keep the header area the same because then our art work and screening can be kept uniform. [149]

“Q. The header area being the area to which the copy is applied? A. That is right.

“Q. I notice that you have a lot of different styles and arrangements shown in Exhibit 1 and in Exhibits 5, 10 and 15. What governs the arrangement that is made up?

“A. Well, there are probably two main factors: One is the preference of the customer and the other is the fit on the car. In some cases the car will not take, for example, a top mount frame and, therefore, you must take a bottom mount frame. Some customers prefer having the city name and their company name all in one place; others prefer having it split such as having copy in both areas. So, with this arrangement we are able to satisfy both of those needs: The customer's preference and the fit of the car.

“Q. From that information then it would appear that it is merely a matter of expediency or choice as to where the copy is placed and how the frame is to be mounted? A. That is right.

“Mr. Adams: I think that is all that I have. Can you think of anything that might help? [150]

“Mr. Palmatier: No, not particularly.

(Deposition of Stanley M. Olson.)

“Mr. Adams: Okay. I think I will ask just a couple of questions more, Bob, excuse me. I just thought of something.

“Q. (By Mr. Adams, continuing): Would you state, to the best of your recollection, how long after the orders were typed up that shipments were made on these early sales of your license frames?

“A. Certainly, it would not be sooner than about a week or week and a half and not longer than three weeks. Particularly in this case, these were new products so we were geared to get the items out quickly so we would have samples and actual orders on cars on the street to show.

“Q. Were your die sections all made up prior to taking orders in this case?

“A. The dies were completely made and we had actual stampings before we went to sell.

“Q. You say you had ‘actual stampings.’ What do you mean by that?

“A. Actual frames; blanks.

“Q. You made up frames before you called on the customers?

“A. Yes. They actually saw what they were getting. [151]

“Q. That has the customer’s possible copy on it, too?

“A. Well, we did make—I know for sure that we made Motor Sales and Dependable Motors. We actually made up samples to show them before they ordered. Kobb Motors, I do not remember. We had

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to have a name on the frame and we took, naturally, local customers to whom we could show the frames. So in those cases, of course, we were all set to go. It was just a matter of going out in the factory and running them.

“Q. In other words, the Dependable Motor Sales identified by Exhibit 9, sales order 2792—there definitely was a sample made up and shown before that order was taken? A. Yes.

“Q. And similarly to the Motor Sales order of January 16, 1948, identified on the customer card for Motor Sales? A. Yes.

“Mr. Adams: That is all.

“Mr. Palmatier: All these were available when they first started selling?

“Q. (By Mr. Adams, continuing): Did I understand you to previously testify that all of the models [152] shown (indicating) in Exhibit 1 were available to your customers when you first introduced this frame onto the market?

“A. Oh, yes.

“Q. Or shortly thereafter?

“A. Yes. They were available from the start. That was the idea in planning.

“Mr. Adams: All right. That is all.

“Cross-Examination

“By Mr. White:

“Q. Mr. Olson, you will recall that in December of 1952 you received a letter addressed to your at-

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tention at the Douglas Company from R. W. Fulwider?"

The Court: There is an objection here. Do you now object?

Mr. John Young: Yes, I do object to that as being beyond the scope of the direct. I do not now object to this; I don't think it makes any difference whether it goes beyond the scope of the direct or not.

The Court: All right. Go ahead.

"Q. (By Mr. White, continuing): This letter was from Mr. R. W. Fulwider, Attorney for U. S. License Frame Manufacturing Company advising you of [153] infringement of Bessolo Patent D 167,878—the patent in suit?

"A. What are you asking me to remember now? I certainly would not remember any number.

"Q. You did receive a letter from Mr. Fulwider in December of 1952 charging the Douglas Company with patent infringement of a design patent?"

Mr. Young: Your Honor, shall I continue with the colloquy or omit the colloquy?

The Court: No, skip the colloquy.

"Q. (By Mr. White, continuing): Mr. Olson, in December, 1952, there was a letter addressed to the Douglas Company to your attention from Mr. Fulwider, Attorney for U. S. License Frame Manufacturing Company, charging the Douglas Company with infringement of the Bessolo design patent, was there not?

(Deposition of Stanley M. Olson.)

“Mr. White: Let the record indicate a pause.

“(Pause.)

“A. Well, I believe there was a letter received. However, any letters——

“Q. (By Mr. White, continuing): That’s all I am asking for.

“A. All right. A letter was received——

“Q. I am sorry, sir. Just answer the question, if you will, and if you want to make further [154] explanation of it, Mr. Adams will do it on redirect examination. A. All right.

“Q. There was a letter received by the Douglas Company, as I understand it. It was addressed to your attention? A. That I do not know.

“Q. You don’t recall that? A. No.

“Q. It did charge patent infringement of a design patent, although you don’t recall the particular design patent number? A. Yes.

“Q. (By Mr. White, continuing): Now, you knew that it came from Mr. Fulwider of U. S. License?

“A. No. I don’t know that; I don’t recall that.

“Q. You don’t recall who it came from?

“A. No.

“Q. This letter caused you and the Douglas Company concern to the extent that you turned the letter over to your attorney, Mr. Adams, of Williamson, Schroeder and Adams, for starting an investigation, did you not?

“A. That is not under my jurisdiction.

(Deposition of Stanley M. Olson.)

“Mr. Adams: Same objection. [155]

“Q. (By Mr. White, continuing): I don’t think that is an answer to my question. May I repeat the question: The patent and the letter did cause you and the Douglas Company concern in that you did turn the letter over to your attorney, Mr. Adams, of Williamson, Williamson, Schroder and Adams, to start an investigation?

“A. I repeat that is not under my jurisdiction.

“Q. Did you or did you not—

“A. I did not. I have no jurisdiction over that whatsoever.

“Q. I am not inquiring as to your jurisdiction. I am asking you to—

“Mr. Adams: The witness has answered the question. He did not.

“Q. (By Mr. White, continuing): I am asking you if the patent and the letter caused you and the company enough concern so that you or someone under your direction turned the letter over to your attorney? A. No one under my direction.

“Q. No one under your direction turned it over to your attorney. You admit receipt of this letter. What happened to it after you received it?

“Mr. Adams: Same objection as before.” [156]

The Court: Are you objecting?

Mr. John Young: No, I am not.

The Court: If you are, it is overruled.

“A. That letter—any letter of that nature that might come in would be turned over to our general manager.

(Deposition of Stanley M. Olson.)

“Q. (By Mr. White, continuing): Did you turn this letter over to your general manager?

“A. I gather that I must have then, if I don’t recall. I didn’t have any action in it.

“Q. Now, you say ‘of that nature.’ By ‘of that nature,’ you mean any letter of any seriousness as to the effect, as to the extent of charging the Douglas Company with patent infringement?

“A. Any matter outside of the realm of my job as sales manager.

“Q. I take it that you answered my question as ‘yes,’ then?

“A. I don’t know. Read the question.

“Mr. White: Would you read the second to the last question again, please?

“(The second to the last question was read by the reporter.)

“A. Certainly you wouldn’t imply that every letter that came in—

“Q. (By Mr. White, continuing): Just answer the [157] question. Either you did or didn’t. If you desire to explain—

“A. Ask your question and I will give you a direct answer.

“Mr. White: Will you read the same question again, please?

“(The same question was again read by the reporter.)

“Mr. Adams: That has about four questions.

(Deposition of Stanley M. Olson.)

Will you ask one question at a time, please?

“Q. (By Mr. White, continuing): To put it very simply, if you receive a letter notifying you of patent infringement, that is a serious letter, is it not? A. Yes.

“Q. Such a letter would be, as I understand it from your testimony, then turned over to your general manager by you as a matter of course?

“A. Any letter received from an attorney would be turned over to the general manager regardless of what is its content because I have no jurisdiction over that whatsoever.

“Q. And this letter was so turned over?

“A. That is right.

“Q. Now, just to refresh your recollection [158] a little bit more, Mr. Olson, I will show you a photostatic copy of a letter written by Mr. Fulwider.

“(Counsel hands document to the witness.)

“Mr. Palmatier: Is that an exhibit?

“Mr. White: Pardon?

“Mr. Palmatier: Is that an exhibit?

“Mr. White: Not yet.

“Q. (By Mr. White, continuing): Have you read it? A. Yes.

“Q. It is addressed to you? A. Yes.

“Q. Rather I should say, it is addressed to the Douglas Company directed to your attention?

“A. Yes.

“Q. Now, as a result of refreshing your recollection from this paper—may I have it, please?

(Deposition of Stanley M. Olson.)

“A. Yes.

“Q. Does this paper refresh your recollection as to this particular letter?

“A. Yes. I see the letter.

“Q. So that in December from the date of this letter, December 20, 1952—at least some time in December within several days after December [159] 20th, you received this notice from Mr. Fulwider relative to the patent infringement?

“A. I gather with this that I did.

“Q. But you have no recollection of taking any action with reference to this letter yourself?

“A. No.

“Q. Now, I would like to hand you a photostatic copy of a letter on the letterhead of the Douglas Company, dated January 11, 1956, and written over your signature.

“Mr. White: Incidentally, I would like to ask Mr. Adams if he will stipulate that that is a true and correct copy of the letterhead and letter?

“(Brief pause.)

“Mr. Adams: It appears to be a copy of your letter.

“The Witness: Yes.

“Mr. White: As I understand it, it may be so stipulated?

“Mr. Adams: It appears to be a copy of the letter that was apparently sent by Mr. Olson to the firm of Lyon & Lyon.

(Deposition of Stanley M. Olson.)

“Mr. White: On the letterhead of the Douglas Company?

“Mr. Adams: That is right. [160]

“Q. (By Mr. White, continuing): Now, you have looked at it, Mr. Olson? A. Yes.

“Q. The letter was written at your direction?

“A. Yes.

“Q. Over your signature?

“A. You mean I dictated the letter?

“Q. Well, if you did dictate it then it was written at your direction? A. Yes.

“Q. And over your signature? A. Yes.

“Q. Now, I would like to ask you to look at this letter, the first paragraph, third sentence, beginning with ‘on our letterhead’ and ending ‘1932.’ Would you read that sentence aloud, please?

“A. ‘On our letterhead you will notice that we have a statement about serving auto dealers well since 1932. This is the only’—

“Q. I’m sorry. That is as far as I wanted you to go. A. All right.

“Q. Is that one statement starting with ‘on our letterhead’ and ending ‘1932,’ is that a correct statement? [161] A. Yes.

“Q. Now will you take that copy of the letterhead and will you point out to me the words ‘auto dealers’ on that letterhead?

“A. Since 1932? You mean about the whole—

“Q. I’m sorry. Just be responsive, if you will, to the question. Will you point out to me the words

(Deposition of Stanley M. Olson.)

on the letterhead 'auto dealers'? Is it anywhere on there?

"A. No, it isn't on here.

"Q. All right. Thank you. Will you point out to me on the letterhead the word 'serving'?

"A. No, it isn't there.

"Q. Will you point out to me on the letterhead the word 'well'? A. No, it isn't there.

"Q. Thank you. Now, Mr. Olson, you are vice president in charge of sales as I understand it?

"A. Right.

"Q. And since you came with the company as then either sales manager or vice president in charge of sales—— A. Yes.

"Q. You progressed from one responsible position to another more responsible position? [162]

"A. In title.

"Q. Well, in title at least and certainly the sales manager and the vice president share a great amount of the responsibility for the success or failure of an organization depending on sales.

"A. Thank you.

"Q. You would agree with that statement?

"A. Yes.

"Q. Now I hand you the card identified as Exhibit No. 14 and ask you if you will look at it. There are a list of items occupying the front and the back of the card, are there not? A. Yes.

"Q. A number of them being of various characters such as, for example, one item here says 'No. 34 R Key Cases.' A. Yes.

(Deposition of Stanley M. Olson.)

“Q. I presume they are key cases?

“A. Yes.

“Q. And some of the items start back in 1946 which is before your time and extend through until 1955? A. Yes.

“Q. Now referring you to the card identified as Exhibit No. 8 again there is a list of items [163] going as far back as May, 1947, which again would be before your time? A. Yes.

“Q. Now on there I note in May, 1947, ‘Key Cases.’ In 1949 I note ‘Key Cases.’ Again in 1950, ‘Key Cases,’ and a second time in 1950——

“Mr. Adams: What is the purpose of this line of questioning?

“Q. (By Mr. White, continuing): —again being indicative that——

“Mr. Adams: I object to this line of questioning as being irrelevant to the problem of license plate frames. What is the purpose of this?”

The Court: You can skip that colloquy.

“Q. (By Mr. White, continuing): —again at least indicative on this card are some entries of a number of other different products that Douglas sells besides license frames? In other words, you do sell other products besides license frames?

“A. Yes.

“Mr. Adams: He has already testified to that.

“Mr. White: Yes.

“Q. (By Mr. White, continuing): Those entries on the card would be indicative of some of the other products which you do sell? [164]

(Deposition of Stanley M. Olson.)

“A. Yes.

“Q. Now I have before me three license plate frames which have been respectively identified as Exhibits 5, 10 and 15. Now these three exhibits show that there are variations in the style of plate as sold by the Douglas Company, do they not?

“A. Yes.

“Q. In other words, it would be fair to say that from time to time you have sold license plates under various styles or changes of style?

“A. You mean by that the copy? Are you talking about copy now, or the shape?

“Q. The over-all style of these (indicating) frames?

“Mr. Adams: Style meaning appearance?

“Mr. White: Yes, style meaning appearance.

“Q. (By Mr. White, continuing): In other words, you have three different forms of plates here?

“A. You are wrong. There are only two. There are two different shaped frames before you.

“Q. Well, now, let me rephrase the question, then: Exhibit No. 5 is dissimilar from Exhibit No. 10?

“A. That is correct. They are two different frames. [165]

“Q. And Exhibit No. 10 is dissimilar from Exhibit No. 15?

“A. That is correct. They are two different frames.

(Deposition of Stanley M. Olson.)

“Q. And Exhibit No. 10 is dissimilar from Exhibit No. 15?

“A. It is not from our point of view because these areas (indicating)—the frame style is exactly the same. It is just a different size to fit a different state. It is the identical frame.

“Q. Well, now, in Exhibit No. 10, there is a deepened portion on the bottom and in Exhibit No. 15 there is a deepened portion on the top?

“A. However, that is the same frame.

“Q. Is that right? Is that statement correct or not?

“A. No, that's the same frame.

“Mr. White: Please answer the question and I move to strike the answer as not being responsive. I will rephrase the question again:

“Q. (By Mr. White, continuing): In the item identified as Exhibit No. 10 as intended in normal position upon an automobile, there is a deepened portion on the bottom of the frame? Is there not? [166] A. Yes.

“Q. In the item identified as Exhibit No. 15 as normally intended to be positioned upon an automobile, there is a deepened portion on the top of the frame? Is there not?

“A. Yes. They are both the same number.

“Mr. White: I move to strike that last part as not responsive.

“Q. (By Mr. White, continuing): At any rate, the Douglas Company does produce and has pro-

(Deposition of Stanley M. Olson.)

duced from time to time different style changes? I think you testified to that?

“A. We have made two different frames—excuse me, three different frames: No. 101, shown in the literature; No. 102, both top and bottom mount; and we have made 104, which is not shown in this literature.

“Q. So you have made changes and do sell different styles?

“Mr. Adams: He has already testified to that about four times.

“Mr. White: All right. That is fine. He has so testified.

“Q. (By Mr. White, continuing): Now as vice president in charge of sales and as sales manager, you [167] are the person in the Douglas Company that is primarily responsible for seeing that the products are sold? A. Yes.

“Q. Which I presume is a full-time job? Is that correct? A. Yes, plus.

“Mr. White: May I have the answer on that?

“(The answer was read by the reporter.)

“The Witness: Plus. I mean more than a full-time job.

“(Remarks off the record.)

“Mr. White: I think that is all.

(Deposition of Stanley M. Olson.)

“Redirect Examination

“By Mr. Adams:

“Q. I have just one or two questions, perhaps. You previously testified on direct, I believe, that Exhibits 10 and 15 bore the same model number as far as you were concerned, one being a top mount and one being a bottom mount?

“A. Yes. Exhibits 15 and 10 are both 102 frames; one is a top mount frame and the other is a bottom mount frame.

“Q. Top mount being which one? [168]

“A. Top mount is No. 15 and bottom mount, No. 10.

“Mr. Adams: At this time I would like to offer all of defendants' exhibits identified in this deposition, 1 through 15, into evidence for purposes of this deposition and for subsequent use at the trial.”

The Court: That may be omitted.

“Q. (By Mr. Adams, continuing): With respect to Exhibit 1, this is a piece of sales literature which you are thoroughly familiar with?

“A. Yes.

“Q. Did you approve this literature before it was ultimately printed up? A. Yes.

“Q. In the job of sales manager which you had at the time these invoices or sales orders were made up, it was your responsibility, was it not, to see that all of these orders were duly recorded by the company and that the salesmen's commissions were duly paid? A. Yes.

(Deposition of Stanley M. Olson.)

“Q. And that you personally were responsible for the keeping of these records? [169]

“A. That is, the people are responsible to me for these records?

“Q. Yes. A. Yes.

“Q. Similarly, that is true with respect to the customer cards, Exhibits 4, 8 and 14? A. Yes.

“Q. And as sales manager you are thoroughly familiar with all of the products consisting of license frames—

“Q. (By Mr. Adams, continuing): You are thoroughly familiar with all of the license frame products which the company has sold since your coming with the company? A. Yes.

“Q. And these frames constitute frames sold and are generally similar to the frames shown in Exhibit 1 with the exception that 104 is not specifically shown but replaces 101? A. Yes.

“Mr. Adams: That is all, I think.

“(Remarks off the record.)

“Mr. White: I think we should record that Mr. Palmatier is appearing as counsel.

“Mr. Adams: It makes no difference. [170]

“Q. (By Mr. Adams, continuing): Another question is how was the Exhibit 1 distributed and used by your company? I think you have testified to that but would you repeat it just briefly?

“A. This was mailed to automobile dealers and was also used by our salesmen as a catalog sheet.

“Q. Have you seen in use on the streets your

(Deposition of Stanley M. Olson.)

101 license plate frames, your 102 license frames, and your 104 license plate frames?

“A. Yes. We have seen them all.

“Q. Including the Kobb Motor Sales frames specifically? A. Yes.

“Mr. Adams: That’s all.

“Mr. White: No recross-examination.” [171]

* * *

GEORGE DuVALL

called as a witness by and on behalf of the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Fulwider:

Q. Mr. DuVall, have you been connected with the license frame business? A. I have.

Q. Approximately when did you first become connected with that business?

A. I was connected with the firm of the [177] Southern California Plating, which is the parent company, from 1931 to—

The Court: Parent company of what?

The Witness: U. S. License Frame Company.

—at which time they were not making license frames, they didn’t start to make them until about 1935 or ’36, somewhere along in there.

Q. (By Mr. Fulwider): They were in the general plating business? A. That is right.

(Testimony of George DuVall.)

Q. Did you do any die casting at that time?

A. Die casting and auto accessories of various descriptions.

Q. Then how long did you stay connected with the Southern California Plating Company?

A. I was with the firm straight through from 1931 to 1951 without a break, and then I came back for another six months period in 1953.

Q. During the latter part of that period of your service a firm under the name of U. S. License Plate Manufacturing Company was carrying on the license frame part of the business?

A. That is correct.

Q. What were your duties, what was your capacity with that company? [178]

A. I was engineer for the firm and took care of, you might say, developing customers' ideas into producible form that could be manufactured.

Q. Did you have anything to do with preparing products for production or the tooling?

A. Yes, that was one of my primary jobs, to see that we made proper tooling as reasonable as possible to save the customer money and make a profit for ourselves.

Q. In that connection, I take it you had something to do with the manufacture or the design at least of dies used for making license frames?

A. Practically every one of them that was produced was put on paper before it was made, and I am the one that put it on paper.

(Testimony of George DuVall.)

Q. Then from that the tooling was manufactured? A. The tooling was manufactured.

Q. Are you familiar with tooling under the name of master dies for license frames?

A. Yes. A master die can be interpreted as a die that can have an adapter put into it with a cavity in which an insert can go; it can be made up of a number of pieces.

Q. Are there several different styles of master dies for die casting purposes?

A. There are several different styles. You can have one master die that is put on the machine that can make items [179] other than license frames on the same master die.

Q. In your experience in design tooling—first, let me ask, did you have occasion to be connected with the actual production of frames from the dies which you designed?

A. Yes, I did, clear through to the customer, because the customer's request, he often wanted something special, and it was up to me to put it on paper and get an approval either by the customer or his representative so that we could be sure that we were not spending a lot of money on dies that weren't correct.

Q. So you had to do with production, the actual production facilities, as well as the design facilities?

A. That is correct.

Q. As I understand it, different states have different sized license plates, is that correct?

(Testimony of George DuVall.)

A. In the period when the manufacture of license frames was first begun, we started off with dies that were in the western states, and then it spread all over the United States, and by the time we had them to cover most of the 48 states there were certain dies that were interchangeable with other states, merely by changing the lug facing or the facing of the little ear that holds the license plate to the car.

Q. I call your attention, Mr. DuVall, to Defendants' Exhibit C, which as I understand it is called a double header type plate. [180] A. Yes.

Q. The ears you were speaking of are these two (indicating) ?

A. These two projections or holes here through which the plate of this particular state and the bracket on the car naturally have to be all fastened together to make it an integral part.

Q. Prior to the time you started making what are called double header frames, did you ever employ a double cavity or 2-cavity dies for making single heads?

A. Oftentimes we did, and one of the primary purposes of that was in order for some states, to produce a frame for some states and also produce it for another state, we would have a cavity on both top and bottom to change the distance between the lugs so that it would fit the other state's plate.

I don't know if that is understandable?

The Court: I do.

(Testimony of George DuVall.)

Q. (By Mr. Fulwider): I wonder, Mr. DuVall, if you would sketch out for the court a typical die of the type you have been speaking of wherein you have two cavities, one top and one bottom, that permit you to adjust the facing of those ears for different sized plates.

A. (Drawing on paper): I made this pretty rough, but [181] it will give you an idea of what we have in mind.

Q. Will you explain to the court the functioning of that?

A. The point I want to bring out is the fact that this would represent what we would class as a master die—

The Court: That is a double header?

The Witness: This happens to be a double header. That is the point I want to bring out.

This is all solid and then there is an adapter, let's say, at the top and the bottom. The bottom adapter that was made originally for our purpose, it was still a 2-cavity die but it was perfectly plain across the bottom making a plain frame, but the reason for that is that when this state took this size we would put an adapter in which—I will exaggerate it here so you can get an idea (drawing)—we would bring those ears in closer to fit another state, and that was the primary purpose of the two-cavity die.

Q. (By Mr. Fulwider): The correct way to describe dies like that, then, would be a double cavity die rather than a double header die?

A. That is true. In fact, our first ones were

(Testimony of George DuVall.)

double cavity dies principally for the purposes of changing the lug or mounting ear configuration.

Q. Do I understand it correctly, that double cavity dies are 2-cavity dies like you have sketched for us here [182] that have been common in the trade for many years?

A. Very definitely. A die can be made up with movable ends, movable top and bottom. They don't always have to be set directly in, they can come in from the outside and project a great distance beyond the die and still be functional in a die cast machine.

Q. Am I correct in that some master dies actually have the end sections of the die which forms the end sections of the plate, that they are movable in and out?

A. That is true. That can be done very easily.

Q. And that was standard practice?

A. That was done in practice.

The Court: You catch the varying length of license plates in different states?

The Witness: That is true. That is the reason for it. Any time you had a standard height on a plate, why you could use the same lengthening process. If it was a question of height of the frame and not the width, why then those two end pieces could be made a little longer and that would satisfy the use on, say, two or three states.

The Court: How many sizes of plates do they have, do you know?

(Testimony of George DuVall.)

The Witness: There were at least 30-some different sizes, in fact possibly closer to 40 different sized plates for the 48 states. [183]

There were very few of them at the time we first started in that were duplicates of one another.

The Court: In size?

The Witness: In size and especially the hole configuration.

Some of the sizes—now this will give you an example—there was one die which we called a 7-state die, and that die, without any moving in or out or up or down, was usable for seven states with the adapters that were used to change the hole spacing, and we were able to produce frames for those seven states.

Q. (By Mr. Fulwider): That was a double cavity die?

A. That was a double cavity die. In fact, it can be carried further, it can go to any number of cavities, but that is the primary purpose of a double cavity die.

Q. When you are making a frame with an enlarged, what we have been calling a header, at top or bottom or just a plain frame?

A. That is true.

Q. If you made just a plain frame with the dimension, the lateral dimension of the width of the plain frame part, if it was the same all the way around, you would still use this kind of a die, as I understand it?

(Testimony of George DuVall.)

A. That is true. You can still use this same die. [184]

Q. You have put a few marks on here. You would indicate this large rectangle as what, a die plate?

A. In our case we would call that a master die.

Q. Now the line leading from the cavity on the lower part of the die in which you have indicated an insert, you have marked that "adapter," is that correct?

A. That is correct. That is the part in which the actual engraved or embossed insert is inserted.

Q. Will you do the same thing to the upper one?

A. We will put the insert here (marking on document). I would say in standard die practice this would be the normal name given to them.

Q. You have marked "insert" with a line and arrow to that portion of the adapter carrying the name, is that right?

A. That is right. I will put in "name." (Marking on document.)

Q. And the part you have marked "adapter" is the entire block, shall we call it, that sits in the cavity?

A. Right. This would be called a plain adapter. Then this would be for some other state (indicating), and this can be applied to both the top or bottom. That is one of the primary purposes of making that double cavity die.

Q. In other words, one of the reasons for mak-

(Testimony of George DuVall.)

ing a double cavity die is that so you can readily insert it and have an insert top or bottom? [185]

A. That is right, from an economy standpoint, if nothing else, because if it is made out of the finest or the best of tool steels, the way it should be, it can run up into thousands of dollars. As a rule they run maybe in the neighborhood of \$1,200 or \$1,400 to get set up, and by a change of \$75, or \$50, or \$100, you could make it fit another state.

Mr. Fulwider: I would like to have the sketch that the witness has just made marked as Plaintiff's Exhibit 5.

The Court: Admitted.

(The sketch referred to was received in evidence and marked Plaintiff's Exhibit No. 5.)

Q. (By Mr. Fulwider): Now, Mr. DuVall, were you with Southern California Plating Company when they started making what are now known in the trade as double header frames?

A. Yes, I was with them at the time.

Q. Double header frames similar to Exhibit 3? That I believe is a U. S. License frame, is it not?

A. Yes, that is right. I can tell by the front of it, not even looking at the back.

Q. Now as I understand it, these master dies that you discussed and sketched for us on Exhibit 5, were in use for quite some period of time prior to the time that your company started making double header frames?

A. Definitely. It was for a good purpose, I mean

(Testimony of George DuVall.)

for [186] enabling the firm to make plates for other states as well as the one for which the die was originally intended.

Q. So that as a practical matter and solely for economic purposes you had been employing double cavity dies for some years prior to the time you started making double header frames?

A. That is true.

Q. Was that the general practice in the trade, do you know?

A. I am sure that it would be from an economical standpoint because, as I mentioned before, when you can adapt one die to make something for a different configuration you are saving money.

Q. Can you tell me approximately when U. S. License Frame started making double header frames?

A. I believe it was in '48. You probably have here in court the official record of exactly when it was.

Q. It was while you were with the company?

A. I was with the company, yes, sir.

Q. In 1948? A. Yes, sir.

Q. Did you have any discussions with Mr. Bes-solo and/or Mr. Bell at the time that the idea or design, shall we say, for double header frames was brought up?

A. Yes, I did, although not being the inventor my job [187] was to take any idea and put it on paper to see the feasibility of it, maybe make a

(Testimony of George DuVall.)

sample, and have it in a condition that we would be able to show it to a customer.

Q. At the time Mr. Bessolo suggested to you, and possibly Mr. Bell, his idea or design for the double header frame similar to the one you have in front of you, Exhibit 2—and I will show you a copy of Exhibit 1, the patent in suit—had you ever seen a double header frame on the market or elsewhere?

A. No, I hadn't. In fact, it was through our discussion at the moment that we thought it would be a good idea to do just this, patent it, and that is the reason that Joe asked me to make sketches that could go to the patent attorney.

Q. Was it part of your job to keep abreast of what was going on in the license frame business as to competitors' products?

A. I would say it was. You can't tie my position down to one particular category, because it doesn't mean just sitting at the board making engineering drawings and tool and die designs; it went further than that, because I was interested in promoting the products for the company which would make it a more substantial job for myself. I was in more or less of a foremanship capacity in the plant. I didn't have any one specific duty. [188]

Q. Did you, as part of your duties, talk to customers and discuss with customers new ideas, new designs?

A. Definitely, although I might not have com-

(Testimony of George DuVall.)

pleted the terms, I would have to get the mechanical details correct before we started a die.

The Court: Did you make the drawings that appear on the patent, the original drawings?

The Witness: I made the drawings from which these were made. I think the patent draftsman actually drew these up in India ink, but I made the ones from which these were made.

The Court: When did you make those, do you recall the date?

The Witness: I don't recall the date exactly.

The Court: Was it in 1948?

The Witness: It was in '48, I am sure.

The Court: Was it before December, 1948?

The Witness: Yes, I am sure it was.

Q. (By Mr. Fulwider): Let me ask you this question: Did you make up any drawings for inserts or modifications of dies pertaining to the first double header frames made by U. S. License Frame of Southern California Plating?

A. Would you state that again? Did I make any what?

Q. Did you make any drawings or design any inserts or any tooling having anything to do with the building of the [189] first double header frames?

A. Definitely. It was my job to see that it got done.

Q. Do you know how the sales of this first double header frame were?

A. I have an idea. On that score it wasn't received very well right at the beginning, the price

(Testimony of George DuVall.)

was high because we had duplicate work to do all the way down the line. But as time went on we would find easier methods of doing it and save on our tooling cost. Then the sales picked up steadily, I would say, from its very inception.

Q. Up to the time that you left the company, I believe in 1951, by that time how did the sales of the double header frames compare with the single header frames?

A. I would as an estimate believe that it was probably half and half, in other words, almost 50-50, as many of the customers would like to retain their single header frames. However, when we were able to sell them on the higher-priced frame we did so because a higher-priced item gives you a little more margin.

Q. After you came on the market with the double header frame, did you have any competition from others making double header frames similar to yours?

A. Yes, there was. It seemed as though very shortly after we started, I would say in a matter of months, shortly after the frames were on the market, the demand became pretty [190] great and we, having set up to do it, would fill all the orders we could.

But it seemed as though some of them slipped away due to competition. Others had started to make them and cut the price.

Q. Do you know whether or not the competition

(Testimony of George DuVall.)

in double header frames attracted the sales of Southern California Plating or U. S. License Frame, rather?

A. Well, I would say it did, because at the moment it was becoming a very popular item, and due to the fact that it was becoming a popular item, you might say dollar-wise it was the bulk of our sales because of the additional price. They were almost—well, they were quite a few cents apiece above the price of the single header frames.

Q. I believe I asked you this, I am not sure, though; prior to the time that U. S. License Frame came on the market with the double header frame similar to the Bessolo patent, had you ever seen any double header license frames on the market at all?

A. No, I really had not, and I think had there been, I was interested enough in the type of work we were doing, to run across some of those.

Mr. Fulwider: That is all, your Honor.

The Court: Cross-examine. [191]

Cross-Examination

By Mr. Young:

Q. Mr. DuVall, I believe you said you left the U. S. License Frame Company in '51 and you had a 6-month return in '53, is that right?

A. That is right.

Q. What is the name of your present employer?

A. I am employed at Librascope in Glendale, and I am a designing engineer. I am still following

(Testimony of George DuVall.)

the same line that I followed from the very beginning.

Q. Will you tell me what company you went with in 1951 when you left the U. S. License Frame Company?

A. That was a company that was in the manufacture of doors and window sash. The name of the company was Weathervane Corporation, and it was entirely in a design capacity also.

Q. Did you return from that company to U. S. License Frame?

A. Not directly. I had made my business designing and I went from that company to a company called Precision Engineers, which was later changed to—it was Precision Engineering Manufacturing, Inc.—it was changed to Prestoline Corporation. That was in a design and engineering capacity for their particular product, straightening them out on blueprints and the engineering department. [192]

Q. At the present time do you have any connection with Mr. Leonard DeBell?

A. He is a personal friend and aside from that I have had no business connection other than at various times to take care of engineering jobs that he might have to offer.

Q. Do you do those on a part-time basis at the present time?

A. That is correct, a part-time basis.

Q. Are you now working on engineering jobs for Mr. DeBell? A. That is correct.

(Testimony of George DuVall.)

Q. Do they have anything to do with license plate frames?

A. It does not whatsoever. It is entirely aside from that.

Q. Mr. DuVall, I believe you said you made the drawings from which the Patent Office draftsman made the final drawings that were mailed to the Patent Office?

A. As I understand, and you being an attorney you know, that a certain form has to be used to make the actual drawings.

Q. Yes, that is right. But the sketches you submitted resulted in drawings made by a draftsman who used India ink? A. That is right.

Q. And those were sent to the Patent Office, is that [193] right?

A. Let us put it this way: Taking an idea from an inventor, who is ordinarily a layman, he has an idea in his mind, he cannot express it on paper exactly the way he would like to express it, so that is where the draftsman or designer fits in.

Q. Do you recall when Mr. Bessolo came to you with his idea?

A. I do, because I was employed there. I had a little separate office right at the firm.

Q. When was that? A. That was in '48.

Q. Do you know what time in 1948?

A. That I do not remember.

Q. What did Mr. Bessolo bring to you?

A. Merely pencil sketches giving the idea of the double header frame.

(Testimony of George DuVall.)

Furthermore, he had taken a frame and made a cardboard cutout showing the way the thing would look if it were made in a double header frame.

Q. You are quite certain that the cardboard cutout related to this particular design as shown by Plaintiff's Exhibit 1?

A. What is Plaintiff's Exhibit 1?

Q. The patent before you. [194]

A. Excuse me.

Yes, it was primarily for that purpose.

Q. Was it for any other purpose?

A. The only other purpose it could be for is to convey the idea to those that would have money to finance the thing, to build dies and put the thing over, get it rolling.

Q. You are quite certain that you saw a cardboard model? A. Definitely.

Q. On this particular design?

A. Very definitely.

Q. And Mr. Bessolo gave that to you?

A. That is true.

Q. Do you know whether Mr. Bessolo ever gave you cardboard models of other designs of license plate frames?

A. I don't recall any in particular. I will say no.

Q. Then Mr. Bessolo gave you this cardboard model, which had been a cutout, I take it?

A. That is true.

Q. Cut out of a larger piece of cardboard?

A. Yes, large enough to represent a frame.

(Testimony of George DuVall.)

Q. Did you see him work on it or did you see it after it was complete?

A. I saw it after it was complete, very definitely.

Q. Do you know whether he did it with scissors or with [195] a knife?

A. I think it was pretty rough.

Q. Do you know whether he made it at the plant or not?

A. That I do not know. He may have made it at home or any place else.

Q. Do you recall now whether the gist of the idea that he gave you to draw was that of a double header frame of any style or particular style?

A. That I can't answer. I don't know.

Q. You don't remember whether the cardboard model, then, was exactly like these drawings or not?

A. It had a name in it. It didn't say "dealer" and it didn't say "city," if that is what you are getting at.

Q. No, I am just getting at the fact that the patent in front of you has a wide advertising space in one place and a narrow one at another, and that the advertising space does not extend completely across the length of the frame in either case.

A. That is right.

Q. Was the model just like that?

A. I would say it was. I will tell you, if you show me any of the exhibits, I can identify them by looking at them. After all, that is quite a few years ago.

(Testimony of George DuVall.)

Q. Do you know where that cardboard model is now? A. I do not. [196]

Q. Do you know what you did with it after Mr. Bessolo gave it to you?

A. I do not remember exactly what was done with it. I don't save all of that or I would have too much.

Q. Did you have the job of sending the drawings that you made to the man who made the patent drawings?

A. That was not exactly my job to do, because I was not the one taking out the patent.

Q. What did you do with the drawings that you made and which you believe resulted in those patent drawings?

A. They were left with Joe Bessolo or Mr. DeBell, I don't know which.

Q. You don't know what you did with those drawings?

A. They were turned over under Joe's supervision, or if Joe turned them over to the patent attorney to get a patent on it, that is where they are.

Q. And it is just the result of your recollection at this time that you say that the cardboard model was like the patent drawings?

A. I would say it would constitute a suitable design of the same thing that is on this patent drawing.

Q. By that you mean to say it was enough to give you an idea of what he had in mind?

A. That is true.

(Testimony of George DuVall.)

Q. From which you made a drawing? [197]

A. That is correct. His sketches would substantiate—I put it in better form so that the patent drawings could be made from that. That is the point.

Q. Do you know if Mr. Bessolo saw the drawings that you made?

A. I am sure he did, if he took them to the patent attorney; yes, sir.

Q. As I understand it, you weren't sure whether you gave them to Mr. DeBell or to Mr. Bessolo?

A. That is true. After all, we were an organization.

Q. You were quite sure that Mr. Bessolo saw those drawings before they went to the Patent Office? A. Very definitely.

Q. Did you make an exact reproduction of the cardboard model? Was the drawing you made exactly the same as the cardboard model?

A. It is pretty hard to make something exactly like something else. It is approximate, let's put it that way. I would say yes.

Q. Could the cardboard model have had areas for the reception of letters which extended entirely across the length of the frame?

A. It could have.

Q. Could the cardboard model have any stippling on it?

A. When you make a drawing you do not put stippling on [198] a drawing to show the customer,

(Testimony of George DuVall.)

you merely paint a black background. That is normal procedure.

Q. I call your attention to the fact that the drawing has stippling shown in the two areas so that the drawing you made did not have any stippling. A. No.

Mr. Young: That is all.

The Court: Any redirect?

Mr. Fulwider: Just one question.

Mr. Young calls my attention to the fact that we didn't offer in evidence the order and invoice pertaining to the first sale as mentioned in the file wrapper of the Bessolo patent.

I would like to have marked as our Exhibit No. 6 the order—I guess you would call it an order—No. 1201.

(The documents referred to were marked Plaintiff's Exhibit No. 6 for identification.)

Mr. Fulwider: And as Exhibit No. 7 the invoice dated April 10, 1948.

(The invoice referred to was marked Plaintiff's Exhibit No. 7 for identification.)

Mr. Young: Before these are admitted in evidence I assume you will have somebody to identify them?

Mr. Fulwider: Yes. That is why I brought them up now. I will have Mr. DuVall do it. [199]

The Court: You say they are referred to in the file wrapper?

(Testimony of George DuVall.)

Mr. Fulwider: Yes, in the statement of the concession toward the end of the Bessolo file wrapper signed by Gazan, there is a recitation of the evidence which was submitted at that time, and there is mentioned these two exhibits.

The Court: Very well.

Redirect Examination

By Mr. Fulwider:

Q. Mr. DuVall, while you were with the company, U. S. License Frame, in 1948, you were familiar with their records, were you not?

Mr. Young: Your Honor, I object to this leading form of question. I think he should ask him if he was familiar with the records.

The Witness: Either way I was.

Q. (By Mr. Fulwider): Can you identify for me this Exhibit 6? A. (Examining exhibit.)

Q. Is that a usual form that was used by U. S. License Frame?

A. At that time this was the usual form, and I recognize the customer as being one—in fact, I think this was the very first order.

Q. For the double header frame? [200]

A. For the double header frame.

Q. Is that the type of record that was kept in the usual and ordinary course of the company's business? A. Yes, it was.

Q. Did you have anything to do, or do you recall, with this particular order?

(Testimony of George DuVall.)

A. I know I made the actual sketch that was approved by the customer.

Q. By the Ridings Company?

A. It would be H. E. Ridings, that is right.

Q. And what did this call for?

A. It calls for 300 pieces, sample, Cadillac in script, set on top in chrome, black background, and 500 bottom insert only.

So that is an order for 300 double headers and 500 single headers.

Q. And the date of this?

A. The date is 3/6/48.

Q. That is March 6, 1948?

A. That is right. It would have to be prior to that that the drawing was made. That is the reason that I couldn't have said the date.

Q. Now, calling your attention to Exhibit 7, an invoice dated April 10, 1948, to the Ridings Motors in Long Beach, can you identify that as the usual type of record [201] used by U. S. License Frame Company at that time?

A. That is correct. This is an invoice. This represents an invoice and a delivery slip, both referring to the same items.

The Court: Let me see them.

(The exhibits referred to were passed to the Court.)

The Witness: The one signed by Mr. Ridings is the receipt for the goods; the one typed is the typed

(Testimony of George DuVall.)

statement that gets mailed after the delivery has been made.

Mr. Fulwider: I offer those in evidence, your Honor, as Plaintiff's Exhibits 6 and 7.

The Court: Admitted.

(The exhibits previously marked Plaintiff's Exhibits Nos. 6 and 7 for identification were received in evidence.)

Q. (By Mr. Fulwider): Now, Mr. DuVall, after the order, Exhibit 6, was received, did you have anything to do with the preparation of the inserts or dies for the production of that order?

A. It was my job to see that the die was set up so that it would cast that particular configuration. I followed it all the way through, probably to the point of sending samples, if they were necessary for approval.

Q. Do you recall whether you made a special die for that first order or were you able to adapt other dies that you had? [202]

A. We adapted probably our present die in order to make the double header, but it was the natural thing to do.

Q. You say you adapted the present die. That I take it, must have been a double cavity die, then?

A. It was either a double cavity die at the time or it could have been a double cavity die before that time for this purpose that we mentioned before, which was for the shifting of the lugs.

Mr. Fulwider: That is all.

(Testimony of George DuVall.)

Mr. Young: No further questions.

The Court: Just a moment. Which one of these indicates that this is to be a double header, Exhibit 6 or Exhibit 7?

The Witness: This is a delivery ticket of the goods that were sent to Ridings and it is this top line that says that. It is the 300 item.

The Court: Is that "sample"?

The Witness: Per sample.

The Court: Cadillac?

The Witness: Cadillac, in script, set in top of frame.

The Court: That is in the top?

The Witness: That is right.

This had the bottom insert only, but on this one, this group, that was a double header deal. (Indicating.) This is the bottom insert only.

The Court: And the bottom insert went on all of the 300 [203] and then they had 200 extra with the bottom insert only?

The Witness: That is right.

The Court: With the word "Ridings"?

The Witness: Yes.

The Court: Very well.

Q. (By Mr. Fulwider): I believe, Mr. DuVall, the differential in price also indicates that, does it not?

A. Oh, yes. On one I think you will find \$1.60 and on the other—

The Court: \$1.15.

The Witness: Yes. That represented quite a dif-

ference in price. That is the reason they ordered the plain ones. [204]

* * *

HARRY H. STAPLES

called as a witness by and on behalf of the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. William K. Young:

Q. Mr. Staples, have you been identified with the automobile industry in years past in Southern California? A. Yes, sir.

Q. When did you initially become identified with it? A. In California since 1932.

Q. Will you please state generally the nature of your different identities with the industry?

A. Yes. I was in the Ford business in Hollywood from 1932 until 1937.

Q. What was the name of that firm?

A. Gray Motor Company.

Q. What was your connection with it?

A. Salesman. [205]

Q. Did you deal exclusively in new automobiles or used? A. New and used; yes, sir.

Q. And cars other than Fords?

A. Used cars other than Fords; yes, sir.

Q. Were you active in that business continuously during that period of time? A. Yes.

(Testimony of Harry H. Staples.)

Q. Generally in the sale of new cars and the purchase and resale of used cars?

A. That is right; yes, sir.

Q. Where were they located in Hollywood?

A. They were in the 1700 block on Cahuenga. They went out of business in 1935, I believe, and sold out to Douglas Appel White, who later sold out to Al Stubing.

Q. They were a Ford distributor?

A. Yes, sir.

Q. After 1937, what was your identity with the business?

A. I went out to Beverly Hills with Herbert E. Woodward in Beverly Hills.

Q. When was that? A. In 1937.

Q. How long did you remain with him?

A. I was with him until 1942.

Q. In what capacity? [206]

A. Well, I was assistant to the general manager most of the time; salesman when I first went there.

Q. Were they distributors for some particular car? A. Ford and Mercury at that time.

Q. Was your experience with them the same as it had been with the Gray Motors?

A. Yes, sir.

Q. What was your further connection in the industry?

A. I went in the service in 1942 and '43, and when I came back I was with Al Hurd, a used car dealer in Hollywood, until 1944.

(Testimony of Harry H. Staples.)

Q. Did they deal in various kinds of cars?

A. Just used cars. That is all we had at that time.

Q. Then from 1944 on?

A. From 1944 I went to Salinas, and I was general manager of the Ford dealership at Salinas.

Q. For how long?

A. Until September of 1945, when I came back to Beverly Hills.

Q. Then what did you do?

A. I came back as general manager and part owner of Herbert E. Woodward, Inc., in 1945, the fall of 1945.

Q. Were they distributors for some car?

A. Ford and Mercury, the same as they were. I was with them in 1937, you see, and came back with them. [207]

Q. So they were Ford distributors at that time?

A. That is right.

Q. How long did you remain there?

A. Until I sold out in August of 1955.

Q. August of 1955? A. Yes, sir.

Q. Were you identified with any other organization?

A. No, sir, just except myself. In 1951 I changed the name of the place to my own.

Q. And what was that name?

A. Dick Staples. We became a Dodge and Plymouth dealer in 1945, incidentally, but at the same location.

(Testimony of Harry H. Staples.)

Q. They were Ford dealers as well as Dodge and Plymouth?

A. No, we gave up Ford and became Dodge and Plymouth dealers in 1945.

Q. So from 1945 to 1955 you were the owner?

A. Manager and part owner until 1951. Then I was sole owner.

Q. Now, during this period that you have related, did you have any experience with reference to the purchase or sale of license frames?

A. Yes, sir.

Q. For automobiles? A. Yes, sir. [208]

Q. Will you just state in a general way how extensive that was, if at all?

A. Well, when we started getting cars in March, I believe, of 1946, we were Dodge-Plymouth dealers then, we didn't have many cars, and I don't recall just when we started getting license frames, whether we installed them right at first, but I eventually contacted Mr. DeBell of the Southern California Plating Company and bought all my frames from him.

Q. Previous to that did you acquaint yourself in any way with what was available on the market with reference to license frame plates?

A. No, sir, not before that.

Q. You did not acquaint yourself?

A. No, sir.

Q. Were you familiar with the various types of frames that were on the market previous to that

(Testimony of Harry H. Staples.)

time from the observation of vehicular traffic on the street or in the jobbers' offices?

A. I know the difference between the types of license frames.

Q. That is what I was asking you.

A. Yes.

Q. If you had any acquaintance with the various types of license frames that were available on the market.

A. Not extensively, no, sir. [209]

Q. To the extent that you knew of the different kinds of types?

A. Well, I knew the different types, yes.

Q. What was your knowledge in that regard?

A. The first plates that we had when we were under the name of Herbert E. Woodward was a single plate, I mean a type with a name at the top, nothing else.

I later changed to what we call the double header type.

Q. When did you change to the double header type?

A. That I can't tell you exactly, but it was quite some time because when I changed the name of the organization in 1951, I called Mr. DeBell and asked them to change the name of the Herbert E. Woodward to Dick Staples, which was the name of my corporation then, and that was a type which I have used until I went out of business in 1945. It was a double header type. I don't remember particularly of having any other type of frame.

(Testimony of Harry H. Staples.)

Q. Does your memory serve you as to the time when you first purchased or got double header license frames?

A. It was years before I changed my name. I can say that truthfully.

Q. From whom did you acquire your first double header license frames?

A. From the Southern California Plating Company.

Q. That is the U. S. License Frame, Mr. DeBell? [210] A. Yes, sir.

Q. Prior to that time did you ever acquire any double header license frames from any other source? A. No, sir.

Q. State whether or not prior to that time you observed, either on vehicular traffic or otherwise on the market, any double header license frames in California. A. Yes, numerous times.

Q. You did so before?

A. Yes. I don't say before I purchased mine, though.

Q. That is what I am asking. Before you purchased your initial order of double header license frames, had you ever seen that type before?

A. No, I don't recall of having seen any on the market.

Q. In connection with your business and identity with the industry, you observed from time to time the various types of frames that were on the market and attached to automobiles, did you?

A. I naturally would; yes, sir.

(Testimony of Harry H. Staples.)

Q. And you have never seen that double header type frame before? A. No, sir. [211]

* * *

WALLACE TITZELL

called as a witness by and on behalf of the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Fulwider:

Q. Mr. Titzell, were you ever employed by Southern California Plating Company?

A. I was.

Q. Or Mr. Leonard DeBell? A. I was.

Q. During what years?

A. I started to work for Mr. DeBell, Southern California Plating Company, in August of 1939.

Q. How long did you continue with that company? A. Until the summer of '45.

Q. Then did you at any subsequent time work for that [212] company?

A. I did. I returned in 1949, in the fall.

Q. How long did you continue there?

A. I worked for the company until eight days ago.

Q. You are no longer working for that company at the moment? A. I am not.

Q. What were your duties or what was your position during the period 1939 to 1945?

(Testimony of Wallace Titzell.)

A. Primarily in sales, although in a small company you get involved in a lot of other detail.

Q. You say you were concerned primarily with sales. Was that calling on customers or handling them in the office, or both? Elaborate a little.

A. It was general office procedure connected with sales.

Q. Did you have anything to do with the production or the shop during that time?

A. Yes, I did.

Q. What was your capacity with the company when you came back in 1949 up through 1956?

A. It was primarily the same, broadened probably a bit through experience that I had gained in the interim, and therefore my duties were broadened to production, more or less general shop foreman, you might say, along with sales. [213]

Q. As part of your duties did you keep abreast of what was going on in the trade as to license frames? A. I did.

Q. Was that true all through the time of your employment with Mr. DeBell? A. It was.

Q. Had you had any connection with plating or die casting companies, or the license frame business, prior to going with Southern California Plating in 1939? A. No, I did not.

Q. What had been your activity or your business prior to that time? A. Advertising business.

Q. Now, you are familiar with the Bessolo patent, I believe, Exhibit 1? A. I am.

(Testimony of Wallace Titzell.)

Q. And you are also familiar with the license frames made by U. S. License Frame Company similar to Exhibit 3, are you not?

A. I am familiar with them.

Q. Prior to your leaving the Southern California Plating Company in 1945, had you ever seen any double header license frames anywhere?

A. I had not.

Q. When you came back in 1949, do you recall whether [214] U. S. License Frame was manufacturing double headers then? A. They were.

Q. Tell me, were there very many companies manufacturing in this area, manufacturing license frames, prior to the war, that is, prior to December, 1941, during your first two years with Southern California Plating?

A. To my knowledge there were only two other companies.

Q. Who were they?

A. Shehan and Martin, I believe was in business at that time.

Q. At least the bulk of the business, as far as you knew, was being done by those three companies? A. That is correct.

Q. But it wasn't very difficult for you to keep abreast, I take it, of what your competitors were doing at that time? A. That is right.

Q. Was the same true, do you recall, when you came back in 1949? A. No, it was not.

Q. Were there quite a number of companies then?

(Testimony of Wallace Titzell.)

A. To my knowledge there were six or seven at least in the business.

Q. In this area? A. That is correct. [215]

Q. Now, can you tell me something about the sales picture of the double header frame, particularly as contrasted to the sales of the single headers at the time you came back with the company in 1949 and from then on up until the time you left the company this current year?

A. There was a steady demand for double header frames, and the sales of the single header frame seemed to drop off primarily because of the advantage of the area of advertising appearance of it, the balanced appearance of it, versus the old single header frame.

Q. Did the sales of double headers ever surpass the sales of single headers during the time you were with the company? A. In some areas; yes.

Q. Both are still being sold, I take it?

A. Yes, sir.

Q. You came back in 1949. Were other companies making double header frames at that time similar to the Bessolo patent design frame?

A. To my knowledge all of them were. They all looked identical.

The Court: When was this?

The Witness: In 1949.

Mr. Fulwider: In 1949 when he came back with the company. [216]

To elaborate, the record shows that the design

(Testimony of Wallace Titzell.)

was invented about March, or prior to March, and that the Ridings sale was made in March.

The Court: 1948?

Mr. Fulwider: 1948, yes. And the patent was filed in January of 1949.

The Court: February 14, 1949.

Mr. Fulwider: You are right. I am sorry.

The Court: And in 1949 when he came back everybody else was making double header plates?

Mr. Fulwider: That is right, your Honor. We started in 1948 and by the time Mr. Titzell came back, it is my understanding that practically all the companies were offering double header frames by that time.

Q. Do you know of a company by the name of the Douglas Company back in Minneapolis?

A. I do. I am familiar with it.

Q. Were they ever distributors for the U. S. License Frame Company?

A. They were distributing the frames when I returned in 1949.

Q. Did they continue to handle your products for some time after that?

A. They did for about three years, three and a half years. [217]

The Court: You do not know whether they were a distributor in 1948?

The Witness: I do not, sir.

Mr. Fulwider: I believe that is all.

The Court: Cross-examine.

(Testimony of Wallace Titzell.)

Cross-Examination

By Mr. Young:

Q. Mr. Titzell, I hand you Defendants' Exhibit H, which is a patent to Gazan, No. 167,885. I believe you have stated that there were a number of firms making double header type frames when you returned to the U. S. License Frame Company in 1949. Do you make any distinction between the type of frame shown in the Bessolo patent, which was before you, and those shown in the Gazan patent?

The Court: I do not understand your question.

Mr. Young: The question is——

The Court: Does he make any distinction?

Q. (By Mr. Young): When you refer to double header frames, did you refer to both of those or to one or the other?

Mr. Fulwider: I would like first to object to the question and secondly to his statement. As far as I recall, all of my questions of this witness had to do with double headers similar to our Exhibit 2 and to the design. When I said "double header frames" I meant to refer back to the ones we [218] were talking about.

The Court: You did not. Your question was whether or not when he came back in 1949 all the companies were making double header frames.

Mr. Fulwider: My question was supposed to be directed to double headers of the particular design of the Bessolo patent.

(Testimony of Wallace Titzell.)

Q. (By Mr. Young): Would your answers be the same if the questions were phrased in that way?

A. Will you repeat that, please?

The Court: Mr. Fulwider, it is his question. You had better straighten your witness out or straighten the record out because as it is now counsel is correct in his cross-examination.

Mr. Fulwider: I am sorry.

Mr. Titzell, when you came back to the Southern California Plating Company or U. S. License Frame Company in 1949, were there other companies selling double header frames substantially identical with the Plaintiff's Exhibit 2, the frame in front of you, and the patent, Plaintiff's Exhibit 1?

The Witness: Yes.

Q. (By Mr. Young): And by "substantially identical" would you mean to include the design such as shown in the Gazan patent? [219]

A. No.

Q. Then these other companies that you refer to in your opinion were making designs like that shown in the Bessolo patent?

A. That is correct.

Q. When you refer to double header frames, you refer to designs as shown in the Bessolo patent and no other?

A. I did when I answered that question; yes, sir.

The Court: Were they selling double headers like the Gazan patent, too?

(Testimony of Wallace Titzell.)

The Witness: The Southern California Plating Company were.

The Court: The Southern California Plating Company?

The Witness: We designed this originally.

The Court: You designed them, designed the Gazan design?

The Witness: That is my understanding. It was made by them when I returned in 1949, this identical frame was being made.

The Court: In other words, the Southern California Plating Company is the forerunner of the U. S. License Frame Company?

The Witness: That is correct.

The Court: So they were making both frames, the Bessolo and the Gazan? [220]

The Witness: That is right.

Q. (By Mr. Young): Do you consider the Gazan frame to be a double header frame?

A. I do; yes, sir.

The Court: Has the Gazan frame had the trade acceptance that the Bessolo frame has, I mean the type?

The Witness: In my opinion it has not.

Q. (By Mr. Young): Are there other double header frames on the market now so far as you know which have the advertising space extending completely across the top or the bottom and which are 2-line frames? A. Yes.

Q. Is that a popular frame, in your opinion?

(Testimony of Wallace Titzell.)

A. In what degree?

Q. Has it had the trade acceptance comparable to the sales you relate to the Bessolo patent?

A. Not in my opinion.

Q. Would you say that there are more frames in existence now like the Bessolo 2-line frame than all of the other 2-line frames of which you have knowledge?

A. I can only answer that by saying that there are more dies on file at the U. S. License Frame covering this patent. [221]

The Court: "This" meaning Bessolo?

The Witness: That is correct.

The Court: Than any other?

The Witness: That is correct.

Q. (By Mr. Young): Do you have any knowledge of the relative importance of that style shown in the Bessolo patent and the other two manufacturers you mentioned?

The Court: Important to what?

Mr. Young: Sales importance.

May I rephrase that question, please?

The Court: Yes.

Q. (By Mr. Young): I believe you have stated that U. S. License Frame Company, the Bessolo style frame, has the greatest trade acceptance?

A. In my opinion, yes, sir.

Q. Do you know whether that is true of the other two companies whose names you mentioned?

The Court: That makes license frames?

Mr. Young: Yes.

(Testimony of Wallace Titzell.)

The Court: He said now there are six of them. He said from 1945 there were only three companies that made them.

The Witness: That is correct.

The Court: And when you came back in 1949, up until [222] eight days ago, there were six?

The Witness: At least six.

* * *

ROBERT W. BROWN

called as a witness by and on behalf of the plaintiff under Rule 43(b), having been first duly sworn, was examined and testified as follows: [223]

* * *

Direct Examination

By Mr. Fulwider:

Q. Mr. Brown, you are one of the defendants in this case, I believe? A. That is right.

Q. You are also president of the Robert W. Brown Company, Inc., a co-defendant in the case?

A. That is right.

Q. And a director of that corporation?

A. Yes.

Q. Who are the other officers and directors?

A. My wife Olive, and we have my attorney, Sidney R. Traxler, as secretary and treasurer.

Q. And he is now?

A. Yes. He wasn't for over a year and a half, but we reappointed him and he has accepted, so he is now again.

(Testimony of Robert W. Brown.)

Q. He resigned and we dismissed as to him and now he is secretary again?

A. Yes. It is strictly in an attorney capacity.

Q. He is not a stockholder?

A. No, he is not.

Q. Is he a director as well as being secretary?

A. Well, he is secretary and treasurer of the corporation. That would make him a director, too.

Q. That is, you are going to make him a director? [224] A. Yes.

Q. And your wife, I take it, is probably vice president? A. My wife is vice president.

Q. No other officers? A. No other officers.

Q. No other directors?

A. No other directors.

Q. When was the Robert Brown Corporation formed? A. In July, 1953.

Q. As I recall the testimony in your deposition, in July, 1953, you had been doing business for some time individually under a dba Robert Brown & Co.?

A. That is correct.

Q. When did you start doing business as Robert Brown & Co.? A. May, 1952.

Q. Has any stock ever been issued in the Robert Brown Corporation? A. Yes.

Q. To whom was it issued? A. To myself.

Q. Are there any other stockholders?

A. No other stockholders. I am the only one.

Q. You are the sole stockholder? [225]

A. Yes.

(Testimony of Robert W. Brown.)

Q. I take it, then, you have the whole say as to what the corporation does and does not do?

A. I have.

Q. Now, I believe in September of 1952, you made a business arrangement with U. S. License Frame Company, did you not? A. I did.

Q. And that was to get orders for frames manufactured by them for which they charged you a fixed price and you made the difference between their price and what you could get from the customer, is that a fair statement of the situation?

A. It is not correct at all.

Q. Will you tell me what your business arrangement was?

A. My business arrangement with them was—I had been in business for myself as a jobber—

Q. As a jobber?

A. As a jobber, and I had taken orders, and I went to them to ask them if they would like to manufacture frames for me on my orders. They accepted the proposition, the same as any other jobbers in the field.

The Court: They gave you a fixed price?

The Witness: They did.

The Court: And you sold it at whatever profit you could make above that? [226]

The Witness: That is right.

The Court: That was his question.

The Witness: Well, he said I went to them to sell for them, and I didn't.

(Testimony of Robert W. Brown.)

Q. (By Mr. Fulwider): They made the frames that you sold and they billed the customer, did they not? A. They did.

Q. Then the customer was supposed to remit directly to U. S. License Frame?

A. That is right.

Q. But in some instances, as I understand it, during the short period you were connected with that company you collected and transmitted the money to U. S. License Frame?

A. Yes, I did. I believe there was an instance or so.

Q. As I understand it, in November you and Mr. Titzell and/or Mr. DeBell could not agree as to this procedure of yours, of wanting to take the orders in your own name, is that correct?

A. That is right. They wanted me to take it on their order blank, which I refused to do.

Q. So you terminated your relationship with them in, I believe, November, was it?

A. I believe it was November.

Q. 1952? [227] A. Yes.

Q. Prior to that time one of the orders which you had brought in was this order from Eddie Nelson in Huntington Park, about which we have had testimony, is that correct? A. That is right.

Q. The license frame, Exhibit 3, is one identical with frames supplied by U. S. License Frame to Eddie Nelson on that order which you obtained, is it not?

(Testimony of Robert W. Brown.)

A. Well, it has Eddie Nelson on it, so I imagine it was made for them.

Q. Will you examine it?

A. I can see it has Eddie Nelson on it, so it must have been made for him.

Q. I mean, this is a frame made by you—that is the style of frame made by U. S. License Frame?

A. I can see that it is.

Q. After you left U. S. License Frame, or at the time you left them, the order was not filled, was it? A. No, it wasn't.

Q. And you subsequently filled the last portion of it with frames, of which this Exhibit 2 was one, did you not? A. I did.

Q. I believe you arranged the cancellation of the balance of the U. S. License Frame order, did you not?

A. I did not. I arranged the cancellation of it, not [228] from Eddie Nelson, but from myself. The order was placed by me to U. S., and I definitely cancelled it out in March, I believe—I have a copy of the letter—but it was in March of 1953. I wrote them a letter telling them not to manufacture or send any other frames to Eddie Nelson.

Q. I can't hear you.

A. I sent a letter cancelling the balance of the order to myself to be delivered to—

The Court: He said he wrote them a letter in March, 1953, not to manufacture or deliver any more frames to Eddie Nelson.

Q. (By Mr. Fulwider): You knew, however,

(Testimony of Robert W. Brown.)

that pursuant to that order taken by you when you were working with them, they had made up this die, and I think the order was for 1,000 frames, and that the order had not been completely delivered, did you not?

A. I certainly did. I also was very aware that the contract had been violated to where it was no longer valid.

Q. Did you subsequently supply any more license frames to Exhibit 2 to Eddie Nelson?

A. In June, 1953, I delivered him 500 pairs.

Q. What was your source of supply for that 500 that you delivered to Mr. Nelson in June of 1953?

A. I manufactured them myself.

Q. You say you manufactured them. Did you then have [229] die casting equipment?

A. Well, no, I caused them to be manufactured, we will say. I had my dies cast by Monarch Die Casting.

Q. That is, first you had a die made by the gentleman who was in here the other day, Mr. Webb?

A. That is right.

Q. What did you take to Mr. Webb for him to use—by the way, Mr. Webb at that time had made the dies for the U. S. License Frame Eddie Nelson, had he not? A. I have no idea.

Q. You don't know? A. No.

Q. You did know, though, that he had made dies for U. S. License Frame? A. I did not.

Q. You went to Mr. Webb and what did you take to him?

(Testimony of Robert W. Brown.)

A. What do you mean, what did I take to him?

Q. I mean, you wanted him to make a die for you. Did you just draw it out for him or did you describe it with gestures or what?

The Court: Or did you take one of those plates?

The Witness: No, I did not. I took him exactly what I wanted. I drew the drawing myself on a piece of paper exactly like this, and there is no comparison at all between this and U. S. License Frame other than it has got a line at the bottom [230] and a line at the top. I designed the back of it with a reinforcement beam; I also designed it the way it comes down here and up here (indicating) with a smooth angle instead of having it rough.

I designed the entire thing myself and told him exactly what I wanted, and Mr. Webb made it that way. In fact, it is a close copy, we will say, of Angelus Die Casting.

Q. Does Angelus Die Casting still make frames?

A. They certainly do.

Q. Also you used Angelus Die Casting frame as a pattern then?

A. I would say I used it closer than anybody's.

Q. How about one of the Benmatt frames?

A. And it was one of the Benmatt frames that I liked very much.

Q. Who are the Monarch Casting frames sold to, I mean they don't sell to the trade? A. No.

Q. Do they sell to many dealers or just to one outlet? A. Monarch?

(Testimony of Robert W. Brown.)

Q. Yes.

A. Monarch is a jobber casting company. They just do casting job work only.

Q. For anybody that wants it?

A. That is right. [231]

Q. So after you had the die made by Mr. Webb you took that to Monarch? A. Yes.

Q. And they cast the frames for you?

A. That is right.

Q. Did they plate them? A. No.

Q. Who plated them?

A. C. & W. Metal Finishers, Precision Metal Finishers, Custom, Industrial.

The Court: That first 500?

The Witness: No, the first 500 I believe was plated, or this particular 500 you mean?

The Court: Yes.

The Witness: I believe it was plated at C. & W. Metal Finishers.

The Court: How about the paint, do you call that plating?

The Witness: No, the paint we did, my wife and I did it ourselves.

Q. (By Mr. Fulwider): Did you do anything else on the frame other than the paint and packing?

A. Yes, we did. We cleaned them and drilled the holes to clear them, took all the flash off of them and delivered [232] them up to have them polished and plated.

(Testimony of Robert W. Brown.)

Q. And delivered them to Eddie Nelson?

A. Then they were delivered to Eddie Nelson.

Q. Was that your same procedure as to the other orders which you were taking at about that time? A. Yes.

Q. When did you start having Monarch—first let me ask you this: When was the die made for you by Mr. Webb for the Eddie Nelson frame?

A. Between Christmas and New Year's. Merle Brown and I went up to him and asked him if he would make us a die.

The Court: What year?

The Witness: 1952.

Q. (By Mr. Fulwider): Subsequently you had the frames made by Monarch?

A. That is right.

Q. Did you have Mr. Webb make for you any other dies? A. Mr. Webb has made all my dies.

The Court: You still use the same master die with inserts for the name?

The Witness: My master die is made of a different type than anybody else's. I can adapt any state or any type of license frame, so I don't think it would be physically impossible to cast anything but a frame with a master die, unless you went to a terrific expense, but my dies are made with a [233] large insert plate, such as we brought here yesterday, and it is quite different than anybody else's in the business.

The Court: You can insert the top, bottom or ends?

(Testimony of Robert W. Brown.)

The Witness: I can, yes. And my different styles other than this one today are all one piece. I have a large insert and I put the small name insert in the style itself. As you can see here, there is no parting lines, no break, nothing in back or front. This is all one die and we set the inserts inside of it.

The Court: Just the name?

The Witness: Just the name.

The Court: That was the insert you used here that was here yesterday on that die?

The Witness: That is right. We have no headers.

Q. (By Mr. Fulwider): Was the Eddie Nelson order the first one that you supplied after you started your own manufacturing?

A. No, it wasn't. In fact, we started—actually our first order was San Pedro Motors in San Pedro.

Q. When was that?

A. It was in April of 1953.

Q. Now, I believe you said that there were—

The Court: Well, the Eddie Nelson frame, the completion of that original order, was the first one you delivered?

The Witness: No, sir. [234]

The Court: As I understood it, you got an order from him and gave an order to the plaintiff here and you had a parting of the ways before the order was completed, then you had the die made and completed the order. Do I understand you correctly?

(Testimony of Robert W. Brown.)

The Witness: It is partially a misunderstanding.

At that time that I cancelled out and they, for some reason, didn't go ahead and manufacture those, better than 10,000 pair of frames ordered with U. S. that they cancelled all the rest of them out, but they didn't cancel the Eddie Nelson out, and they went ahead and manufactured it after I had given them directions not to.

The Court: They completed the Eddie Nelson order, then?

A. Yes, they completed it, but six months later.

The Court: Then you in June of 1953 also made and delivered some license frames to Eddie Nelson?

The Witness: That is true.

The Court: All right. Then before you had done that you had in the meanwhile made a license frame for San Pedro Motors?

The Witness: I had made it and it was in as much production as I could possibly get polished and delivered. I was delivering all over the state. We had been working day and night completing orders and delivering orders that we had. [235]

Q. (By Mr. Fulwider): That was continuously through that period in early 1953?

A. That is right.

Q. Do I understand you correctly that you cancelled, or had cancelled, all of the orders that had been given or gotten for U. S. License Frame by you while you were with them?

(Testimony of Robert W. Brown.)

A. I didn't get any orders for U. S. but I cancelled out every order that I had given them.

The Court: But Eddie Nelson was the only one that they finished?

The Witness: That is right.

Q. (By Mr. Fulwider): Did you cancel it out by a letter?

A. I cancelled out by letter and I cancelled out verbally.

Q. Do you have a copy of that letter with you?

A. I believe it is here in the files. [236]

* * *

Q. Just one more question. I believe you stated a minute ago that there were numerous differences between Exhibits 2 and 3. Would you point them out to the Court? A. Yes, I believe I can.

My frame, as you see it, goes straight across here and it has a long tapered angle here (indicating). There it comes up straight. Where it goes over it has a radius here (indicating). Also there is a sharp radius here, a sharp radius there, and mine is a longer radius and it again is longer in here (indicating). The frame is heavier in weight, it is reinforced on the back, and it is as far away as you can make it, but you have only one thing to work from, which is a California license plate, and you must put the holes in the same place and the same sizes are standard throughout the business. Where you want to interchange insert dies with other companies, as they commonly do, you must

(Testimony of Robert W. Brown.)

have the same size dies. So I had those made. But this die I believe is a different size than theirs. [237]

As far as being exactly the same, I say it would be much closer to Benmatt and to Angelus because those are the two frames that I—well, it was one of each—I took some from one of them and some from the other and some from my own ideas and put them together. [238]

* * *

The Clerk: Defendants' Exhibit P.

(The document referred to was marked Defendants' Exhibit P for identification.)

Cross-Examination

By Mr. Young:

Q. I show you Defendants' Exhibit P and ask you if you can identify that letter?

A. Yes, I can.

Q. Did you write that letter?

A. Yes, I did.

Q. Did you write it to the person whose name it is addressed to? A. Yes, I did.

The Court: On or about the date it bears?

The Witness: Approximately that date, sir.

The Court: Did you send it?

The Witness: Yes, I did.

The Court: How?

The Witness: By common carrier, mail.

(Testimony of Robert W. Brown.)

Q. (By Mr. Young): Did you have any reply to that letter? A. No, I did not. [241]

* * *

The Court: Very well.

It would seem to me from the plaintiff's point of view that the first question is whether or not Section 102, Subdivision (b), acts as a bar to the validity of your patent:

"A person shall be entitled to patent unless the invention was in public use or on sale in this country more than one year prior to the date of the application for patent in the United States."

Which, in turn, involves the question as to whether or not the Minneapolis plates are of sufficient similarity to be able to say that it is the invention. [247]

* * *

Mr. Fulwider: Yes.

The Court: I do not think any of the prior patents are close enough here to be a publication.

Mr. Fulwider: That was my feeling, and as long as we are in agreement on that, then I can forget the discussion of those.

The Court: I think the first hump is whether or not those plates made and sold in Minneapolis are near enough like your plate to be able to say that the invention was sold more than a year ago.

Under the evidence, I do not think there is any doubt but what there is a question of fact that the sales were made more than a year prior to the ap-

plication. The application was made February 14, 1949, and the first sales under the evidence were made in Minneapolis in December, 1947, so that is more than one year.

So we will reduce it down now to the question of similarity. [248]

* * *

The Court: On the matter of a design patent, I am off-hand, for one who is not an artist like Sir Joshua Reynolds, paintings look alike to me and they look different to others, and all license holders look alike to me but I suppose somebody who is an expert and an artist may see some distinction in a design, and it is not the utility, if I understand the law correctly.

Mr. Fulwider: That is right. It is strictly appearance.

The Court: It is not the ease of manufacture, it is not the convenience, it is just a matter of whether or not it is in the view of someone good-looking and different-looking. [251]

* * *

The Court: Of course, Counsel, in the matter of the design patents I suppose that they receive their greatest use in the design of clothing.

Mr. Fulwider: No, your Honor, really not. There are many clothing patents. On the other hand, if you look at [262] the Gazette week by week, I would say—

The Court: When I say "greatest use" I mean the one that is the most striking and that people think about the most.

Mr. Fulwider: Yes, that is true.

The Court: For instance, the design of a woman's dress, if it can be patented.

Mr. Fulwider: Or like stockings.

The Court: I mean the ordinary person looking at it, you or I, might not see any difference, but it may have some feature about it that is distinctly attractive to that section of the public who would buy it.

On patented flowers there has gotten to be a very fine shade of the line drawn between one rose, a pink rose, and another pink rose, and yet the patents are granted and they are good. [263]

* * *

The point I am making is that the eye or the ordinary observer, not the expert, that these license plate frames look the same to people who are ordinary observers, that that is the test.

The Court: I would say in answer to that, then, that assuming that I am an ordinary observer, this Exhibit 3 does not look the same as any one of the license frames shown on [269] Exhibit A-1 which were sold more than a year prior.

* * *

I submit there is no invention in this patent in suit.

The Court: Well, I do not know whether this "flash of genius" is still the law or not. If it is, then no patent is good and there would be no need for patent lawyers. [274]

Mr. Fulwider: I believe Judge Stephens in a case last year said that if the "flash of genius" rule

has not been emasculated by the decisions, it was certainly overruled by the new statute.

The Court: I think it is by the new statute.

Mr. Young: But nevertheless the degree of difference required to establish novelty is one that they say takes invention, the same as is necessary to establish any mechanical case. The requirement of invention is no less in a design case than in a mechanical case. Here I think that necessary invention has not been shown. You simply have a 2-line frame of a particular stock.

The Court: I am sorry, counsel, but I cannot agree with you. I think it has.

The patent is good, and I think that it is infringed by the one plate made by the defendant, and that is what I call the Eddie Nelson plate, Exhibit 2.

On the matter of the accounting, do you want to refer this to a master, or shall I defer that? [275]

* * *

[Endorsed]: Filed April 30, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 44, inclusive, contain the original

Complaint;

Answer;

Substitution of Attorneys;

Motion and Order for Substitution of Parties;

Findings of Fact & Conclusions of Law;

Judgment;

Notice of Appeal;

Concise Statement of Points on Appeal;

Defendants-Appellants' Designation of Portion of Record on Appeal;

Plaintiff-Appellee's Counter-Designation of Record on Appeal;

which, together with a full, true and correct copy of Notice of Entry of Judgment; and Plaintiff's Exhibits 1, 2, 2A, 3, 3A, 4, 4A, 5, 6, 7, and defendants' Exhibits B, C, D, E, F, F-1, G, G-1, G-2, G-3, H, I, J, J-1, K, L, M, N, O-1, O-2, O-3, & P, and 1 volume of reporter's transcript constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, all in the above-entitled case.

I further certify that my fees for preparing the

foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court this 14th day of May, 1956.

[Seal] JOHN A. CHILDERS,
Clerk.

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15128. United States Court of Appeals for the Ninth Circuit. Robert W. Brown & Co., Inc., Robert W. Brown and Olive W. Brown, Appellants, vs. Leonard DeBell (Substituted for United States License Frame Mfg. Co.), Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: May 15, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15128

LEONARD DeBELL (Substituted for U. S. License
Frame Mfg. Co.),

Appellee,

vs.

ROBERT W. BROWN & CO., INC., ROBERT W.
BROWN and OLIVE W. BROWN,

Appellants.

APPELLANTS' STATEMENT
OF POINTS

Point I.

The Court erred in holding that United States Letters Patent No. D-167,878 in suit is good and valid in law.

Point II.

The Court erred in holding that appellants have infringed said patent by manufacturing and selling license frames exemplified by Exhibit 2.

Point III.

The Court erred in holding that appellee is entitled to judgment for a permanent injunction and an accounting with costs.

Point IV.

The Court erred in holding that license frames embodying the design of the patent in suit were

substantially copied by numerous competitors in the field.

Point V.

The Court erred in holding that the over-all appearance of the design of the patent in suit results in a new and ornamental design when viewed by the ordinary observer.

Point VI.

The Court erred in holding that the license frames exemplified by Exhibit 2 are substantially identical with the design of the patent in suit, Exhibit 1.

Point VII.

The Court erred in finding that the file wrapper references to Watts, Griffith and Overton, Exhibits G-1, G-2 and G-3, respectively, do not anticipate or negative invention of the patent in suit.

Point VIII.

The Court erred in finding that the Patent Office Examiner did not err in allowing and issuing said patent.

Point IX.

The Court erred in finding that the catalog Exhibit J and the Orester and McRuer patents, Exhibits M and N, were not as relevant as the reference patents located by the Patent Office Examiner and in no way disturb the validity of the patent in suit.

Point X.

The Court erred in ruling that the date on Exhibit A-3 was obviously changed from 1949 to 1947.

Point XI.

The Court erred in finding that the license frames made and sold by The Douglas Co., Exhibits A-1, A-5, and A-15, did not anticipate the design of the patent in suit.

Point XII.

The Court erred in finding that The Douglas Co. license frame, Exhibit A-1, is in all material respects a substantial duplicate of the frames shown in the Watts patent, Exhibit G-1.

Point XIII.

The Court erred in finding that the patent in suit demonstrates novelty and invention over The Douglas Co., frame, Exhibit A-1.

Point XIV.

The Court erred in finding that The Douglas Co. license frames, Exhibits A-1, A-10, and A-15, are in all material respects the same as the frames illustrated in the file wrapper reference patents, Exhibits G-3 and G-2.

Point XV.

The Court erred in holding that the manufacture and sale of license frames Exhibits C, D, and K prior to the invention of the patent in suit is not convincing.

Point XVI.

The Court erred in holding that the evidence as to the use of two cavity master dies before the patent in suit to make frames similar to Exhibits C, D, and K is neither convincing nor persuasive.

Point XVII.

The Court erred in its failure to find that the design of the patent in suit failed to exhibit any inventive quality over the following prior art:

- (1) The catalog reference Exhibit J of the Western Auto Supply Co.
- (2) The license plate frames Exhibits C, D, and K.
- (3) (a) Orester, et al., Pat. No. 1,787,545 (1931);
(b) McRuer, et al., Pat. No. 1,451,621 (1923);
(c) Gazan, Jr., Pat. No. 167,885 (1952);
(d) Griffith Pat. No. Des. 134,835 (1943);
(e) Watts Pat. No. 1,536,414 (1925);
(f) Overton Pat. No. 1,660,575 (1928).

Point XVIII.

The Court erred in failing to find that the appellants have not made, sold or used anything inventive which is embodied in the design of the patent in suit.

Dated this 10th day of May, 1956.

Respectfully submitted,

LYON & LYON,

JOHN B. YOUNG,

By /s/ JOHN B. YOUNG,

Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed May 11, 1956.

[Title of Court of Appeals and Cause.]

STIPULATION

It is hereby stipulated by and between the parties through their respective counsel that the following patents shall comprise a book of exhibits of which ten (10) appropriate copies shall be made for use of the Court and counsel:

Griffith	D-134,835
Gazan	D-167,885
McRuer	1,451,621
Watts	1,536,414
Orester	1,787,545
Overton	1,660,575

Dated: July 17, 1956.

LYON & LYON,

By /s/ ROLAND N. SMITH,
Attorneys for Appellants.

Dated: July 18, 1956.

FULWIDER, MATTINGLY &
HUNTLEY,

By /s/ ROBERT FULWIDER,
Attorneys for Appellee.

[Endorsed]: Filed July 23, 1956.